the University of Michigan whose staff prepare missing and exploited children data and documentation to conform to generally accepted standards. No additional applications will be solicited in Fiscal Year 1995.

John J. Wilson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

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Wednesday
October 12, 1994

Part IV

Department of Transportation

Federal Transit Aministration

FTA Fiscal Year 1995 Apportionments and Allocations; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FTA Fiscal Year 1995 Apportionments and Allocations

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation (DOT) and Related Agencies Appropriations Act, 1995 (Pub. L. 103–331), signed into law by President Clinton on September 30, 1994, provides fiscal year 1995 appropriations for the Federal Transit Administration's transit assistance programs. Based upon this Act, this Notice contains a comprehensive list of apportionments/allocations of the various funding programs.

This Notice includes the apportionment of fiscal year 1995 funds for the Urbanized Area Formula and Nonurbanized Area Formula Programs, the Elderly and Persons with Disabilities Program, the Interstate Substitute Transit Program (23 U.S.C. 103(e)(4)), the Capital Program including Fixed Guideway Modernization, the Metropolitan Planning Program and State Planning and Research Program, based on the 1995 DOT Appropriations Act and Federal transit laws. This Notice also contains the allocations for the statutorily required funding for New Starts and Bus under the Capital Program. Statutory limitations on the use of operating assistance are also included in this Notice, as well as other pertinent information.

In addition, an expanded FTA policy regarding pre-award authority to incur project costs is included in this Notice.

Public Law 103–272, signed by President Clinton on July 5, 1994, codifies Federal transit laws under title 49, chapter 53 of the United States Code. This Notice uses the new form of citation followed by the former Federal Transit Act, as amended (FTA Act), citation in parenthesis.

FOR FURTHER INFORMATION CONTACT: The appropriate FTA Regional Administrator for grant specific information and issues; Janet Lynn Sahaj, Chief, Resource Management and State Programs Division, Office of Capital and Formula Assistance, (202) 366–2053, for general information about the Urbanized Area Formula and Nonurbanized Area Formula Programs, the Elderly and Persons with Disabilities Program, the Capital Program (formerly Sections 9, 18, 16, 3) or the 23 U.S.C. 103(e)(4) Interstate Substitute Transit Program; or Sam Zimmerman, Director, Office of Planning, (202) 366–2360, for general information concerning the Metropolitan Planning and State Planning and Research Programs (formerly Sections 8 and 26(a)(2)).

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I. Codification of Federal Transit Laws

On July 5, 1995, President Clinton signed Public Law 103–272, which codifies Federal transit laws under title 49, chapter 53 of the United States Code. The enactment of Public Law 103–272 repeals the FT Act without substantive change, which means that the original meaning of the FT Act provisions are unchanged by this codification, even though the new language in some instances differs from that of the FT Act. The codification includes laws enacted through June 30, 1993. Provisions enacted after that date, and revisions to title 49, chapter 53, will be reflected in subsequent legislation now being drafted in Congress. This Notice accordingly uses the new form of citation followed by the relevant FT Act citation in parentheses. Listed below are the most commonly used citations:

Federal Transit Act	49 U.S.C. §	Subject
Section 3 .	5309	Capital Program.
Section 8 .	5303	Metropolitan Planning Program.
Section 9 .	5307	Urbanized Area Formula Program.
Section 13(c).	5333(b) .	Labor Protection Certification.

Federal Transit Act	49 U.S.C. §	Subject
Section 16	5310	Elderly and Persons with Disabilities Program.
Section 18	5311	Nonurbanized Area Formula Program.
Section 26(a)(2).	5313/ 5314.	State Planning and Research.

II. Background

Urbanized Area Formula Program funds are apportioned by statutory formula to urbanized areas and to the Governors to provide capital, operating and planning assistance in urbanized areas. Nonurbanized Area Formula Program funds are apportioned by statutory formula to the States for capital and operating assistance in nonurbanized areas. Elderly and Persons with Disabilities Program funds are apportioned by statutory formula to the States to provide capital assistance to organizations providing transportation service for elderly persons and persons with disabilities. Interstate Substitute Transit funds are apportioned by formula to areas that have withdrawn planned interstate routes. Fixed Guideway Modernization Formula funds are apportioned by statutory formula to specified urbanized areas for capital improvements in rail and other fixed guideways. Funds appropriated under the Metropolitan Planning Program are apportioned by a statutory formula to the States for allocation by them to Metropolitan Planning Organizations (MPOs) in urbanized areas or portions thereof. Appropriated funds under the State Planning and Research Program also are apportioned to States by a statutory formula. New Start earmarks in the 1995 DOT Appropriations Act and all Bus fund allocations in its accompanying Conference Report are also included in this Notice.

III. Overview of Appropriations for Grant Programs

A. General

In fiscal year 1995, the appropriation for the Urbanized Area Formula and Nonurbanized Area Formula Programs is $2,416,847,844. Of this amount, 94.50 percent ($2,283,921,213) is made available to the Urbanized Area Formula Program; and 5.50 percent ($132,926,631) is made available to the Nonurbanized Area Formula Program. The other program appropriations contained in this Notice are as follows: $4,612,500 for the Rural Transit Assistance Program (RTAP); $59,152,156 for the Elderly and Persons with Disabilities Program; $41,512,500 for the Metropolitan Planning Program; $8,475,000 for the State Planning and Research Program; $48,030,000 for the Interstate Substitute Transit Program; and $1,725,000,000 for the Capital Program. Of the Capital Program amount, $725,000,000 is for Fixed Guideway Modernization, $646,670,000 is for New Starts and $353,330,000 is for Bus.

Table 1 displays the amounts appropriated for these programs, including adjustments and final apportionment/allocation amounts. The text following this table provides a narrative explanation for the funding levels and other factors affecting these apportionments/allocations.

B. Livable Communities Initiative

FTA urges that grantees incorporate to the extent possible the concepts of "livable communities" into the transit and planning projects funded with Federal assistance being made available by this Notice and funds transferred from highway programs. The Livable Communities Initiative recognizes that transit programs can be instrumental in shaping the nature of community development and represent an important tool for enhancing the vitality of individual communities and neighborhoods served by our regional transit systems. Transit facilities and stations can become energetic local activity centers providing convenient shopping, business, and educational opportunities as well as other needed social services like health and day care. They can serve as focal points for attractive mixed used development. Transit services, appropriately sized to community needs, can bind the community together and provide an environmentally attractive alternative to automobile travel and a safe and affordable means of transport for those who might otherwise find it difficult to have full access to community activities.

Livable communities concepts include: (1) Careful coordination of transit planning with community development planning leading to neighborhoods where housing, schools, and parks are within easy walking distance of user-friendly transit that links residents with local social and economic services and jobs; (2) alternatives to the automobile such as transit, pedestrian, and bicycle access and operational improvements such as guaranteed ride home services, neighborhood shuttles, and user-friendly fare collection systems that encourage transit use; (3) mixed-use neighborhoods with residential areas complemented by office and commercial development, green or open spaces, and public services (also transit facilities such as major bus stops or train stations are designed to include , other enterprises that are useful to transit passengers, e.g., day care centers); (4) safe, secure, and customer-friendly streets, transit facilities, and pedestrian walkways; and (5) full community participation in the decision-making process by neighborhood organizations, small and minority businesses, and interested individuals.

FTA will soon be issuing guidance on the Livable Communities Initiative. This initiative will highlight and demonstrate the benefits of livable communities by providing technical assistance along with a limited amount of funding for planning and capital grants.

C. 1996 Summer Olympic Games

The 1995 DOT Appropriations Act has made available $16,000,000 for costs associated with unique transportation requirements of the Centennial Olympic Games and Paralympic Games, which will take place in Atlanta, Georgia, in summer 1996. These funds will be used for the round-trip delivery costs and preparation of roughly 2,000 buses being made available by transit authorities around the country to support the unique transportation requirements of the Olympic and Paralympic Games.

D. Project Management Set-Aside

49 U.S.C. 5327 (formerly Section 23 of the FT Act), allows the Secretary of Transportation to use not more than one-half of one percent of the funds made available under the Capital Program, the Urbanized Area Formula and Nonurbanized Area Formula Programs, the National Capital Transportation Act, as amended, and the Interstate Substitute Transit Program, and an additional one-quarter of one percent of Capital Program funds, to contract with any person to oversee the construction of any major project under these statutory programs and to conduct safety, procurement, management and financial reviews and audits. Therefore, one-half of one percent of the funds appropriated for fiscal year 1995 for the programs noted above, and three-quarters of one percent of Capital Program funds have been reserved for this purpose before apportionment of the funds.

IV. Urbanized Area Formula Program (Formerly Section 9)

A. Total Urbanized Area Formula Apportionments

In addition to the appropriated fiscal year 1995 Urbanized Area Formula funds of $2,283,921,213, the apportionment also includes $24,351,386 in deobligated Urbanized Area Formula funds (including formerly Section 5 formula funds) which have become available for reapportionment under the Urbanized Area Formula Program as provided for under 49 U.S.C. 5336(i) (formerly section 9(o)).

Table 2 displays the amount apportioned for the Urbanized Area Formula Program. After the one-half percent set-aside ($11,419,606), the amount appropriated under this program is $2,272,501,607. The funds to be reapportioned, described in the previous paragraph, were then added. Thus, the total amount apportioned for this program is $2,296,852,993.

B. Data Used for Urbanized Area Formula Apportionments

Data from the 1993 National Transit Database (Section 15) Report Year submitted in late 1993 and early 1994 have been used to calculate the fiscal year 1995 Urbanized Area Formula apportionments for urbanized areas over 200,000 in population. The population and population density figures used in calculating the Urbanized Area Formula are from the 1990 Census.

C. Adjustments for Energy and Operating Efficiencies

49 U.S.C. 5336(b)(2) (formerly section 9(b)(4) of the FT Act) provides that, if a recipient under this section demonstrates to the satisfaction of the Secretary that energy or operating efficiencies would be achieved by actions that reduce revenue vehicle miles but provide the same frequency of revenue service to the same number of riders, the recipient's apportionment under 49 U.S.C. 5336 (formerly Section 9(b)(2)(A)) shall not be reduced as a result of such actions. One recipient has submitted data acceptable to FTA in accordance with this provision. Accordingly, the revenue vehicle miles used in the Urbanized Area Formula database to calculate the fiscal year 1995 Urbanized Area Formula apportionment reflect the amount the recipient would have received without the reductions in mileage.

D. Repayment of Temporary Matching Fund Waivers

Under the Temporary Matching Fund Waiver provision authorized at 49 U.S.C. 5307(i)(3) (formerly Section 9(g)(3)), grantees have been able to request a Federal share of 100 percent up to the area's total apportionment. Four grants or amendments have been awarded which employ the temporary waiver of local matching funds for Urbanized Area Formula grants approved in fiscal years 1992 and 1993. The local share amounts for these grants had to be repaid by March 30, 1994. If not repaid, the amount owed will be deducted from the area's fiscal years 1995 and 1996 Urbanized Area Formula apportionments.

All affected grantees have opted to have their future apportionments reduced rather than pay back funds. Accordingly, the FTA is reducing the areas' future apportionments to reflect the amount owed. The local share payment amount for each project was determined by dividing the project's total disbursement amount through September 30, 1994, by the project's total Federal capital obligations. The calculated percentage was then applied to the project's original local share waived amount. Of the calculated amount determined for repayment, 50 percent has been deducted from the fiscal year 1995 Urbanized Area Formula apportionment. The remaining 50 percent will be deducted in fiscal year 1996. The dollar amounts published in this Notice reflect these fiscal year 1995 adjustments, and the affected areas have been so advised.

E. Urbanized Area Formula Fiscal Year 1995 Apportionments to Governors

The total Urbanized Area Formula apportionment to the Governor for use in areas under 200,000 in population for each State is shown on Table 2. Table 2 also contains the total apportionment amount attributable to each of the urbanized areas within the State. The Governor may determine the allocation of funds among the urbanized areas under 200,000 in population with one exception. As further discussed below, funds attributed to an urbanized area under 200,000, which is within the planning boundaries of a transportation management area, must be obligated in that area.

F. Urbanized Area Formula Operating Assistance

Limitations

The fiscal year 1995 limitations on the amount of Urbanized Area Formula funds that may be used for operating assistance are included in Table 2 with the fiscal year 1995 apportionment.

The operating assistance limitations for all urbanized areas have been increased under 49 U.S.C. 5336(d)(2) (formerly section 9(k)(2)(B) of the FT Act) to reflect the increase in the Consumer Price Index (CPI) for all urban consumers during the most recent calendar years. The CPI Detailed Report, December 1993, published by the Department of Labor (DOL), indicates the calendar year 1993 CPI increase for all urban consumers is 2.7 percent. This increase was applied against the base operating assistance limitation calculated under 49 U.S.C. 5336(d)(2) (formerly section 9(k)(2)(A) of the FT Act).

This increase results in an overall national fiscal year 1995 authorized operating assistance limitation level of $1,083,663,529. However, the 1995 DOT Appropriations Act limits the nationwide availability for operating assistance to a maximum of $710,000,000. Accordingly, the operating assistance limitation published in this Notice takes into account both the 1995 DOT Appropriations Act and Federal transit laws. Therefore, the higher operating assistance limitation under Federal transit laws ($1,083,663,529) has been reduced to the $710,000,000 required by the 1995 DOT Appropriations Act by taking a pro rata reduction across all categories of grantees.

G. Statewide Operating Assistance Limitations

49 U.S.C. 5307(a)(2) (formerly section 9(m)(1) of the FT Act) specifies that in any case in which a statewide agency or instrumentality is responsible under State laws for the financing, construction and operation, directly, by lease, contract or otherwise, of public transportation services, and when such statewide agency or instrumentality is the designated recipient of FTA funds, and when the statewide agency or instrumentality provides service among two or more urbanized areas, the statewide agency or instrumentality shall be allowed to apply for operating assistance up to the combined total permissible amount of all urbanized areas in which it provides service, regardless of whether the amount for any particular urbanized area is exceeded.

H. Designated Transportation Management Areas

All urbanized areas over 200,000 in population have been designated as transportation management areas (TMAs), in accordance with 49 U.S.C. 5305 (formerly section 8(i)(1) of the FT Act). These designations were formally made in a **Federal Register** Notice dated May 18, 1992 (57 FR 21160), signed by

the Federal Highway Administrator and the Federal Transit Administrator. Additional areas may be designated as TMAs upon the request of the Governor and the MPO designated for such area or the affected local officials. As of October 1, 1994, two additional TMAs have been formally designated: Petersburg, Virginia, comprised solely of the Petersburg, Virginia, urbanized area; and Santa Barbara, Santa Maria, and Lompoc, California, which were designated as one TMA.

Guidance for setting the boundaries of TMAs is contained in the joint transportation planning regulations published in the **Federal Register** on October 28, 1993 (58 FR 58040). In some cases, the TMA boundaries which have been established by the MPO for the designated TMA also include one or more urbanized areas under 200,000 in population. Where this situation exists, the discretion of the Governor to allocate urbanized area formula program "Governor's Apportionment" funds for urbanized areas under 200,000 in population is restricted.

49 U.S.C. 5307(a)(2) was modified by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) to require that a recipient(s) be designated to dispense the Urbanized Area Formula funds attributable to TMAs. Those areas that do not already have a designated recipient must name one and notify the appropriate FTA regional office of the designation. This would include those urbanized areas under 200,000 in population that may receive TMA designation independently, or those under 200,000 in population which are currently included within the boundaries of a larger designated TMA. In both cases, the Governor would only have discretion to allocate Governor's Apportionment funds attributable to areas which are outside of designated TMA boundaries. In order for the FTA and Governors to know which urbanized areas under 200,000 in population are included within the boundaries of an existing TMA, and so that they can be identified in future **Federal Register** notices, each MPO whose TMA planning boundaries include these smaller urbanized areas is asked to identify such areas to the FTA. This notification should be made in writing to the Associate Administrator for Grants Management, Federal Transit Administration, 400 7th Street, SW, Washington, DC 20590, no later than July 1 of each fiscal year. In fiscal year 1994, MPOs notified FTA that the following urbanized areas under 200,000 in population are included within the planning boundary of a designated TMA:

Designated TMA	Small urbanized area included in TWA boundaries
Baltimore, Maryland.	Annapolis, Maryland.
Philadelphia, Pennsylvania.	Pottstown, Pennsylvania.
Pittsburgh, Pennsylvania.	Monessen, Pennsylvania, Steubenville-Weirton, OH–WV–PA (PA portion).
Seattle, Washington.	Bremerton, Washington.
Washington, DC–MD–VA.	Frederick, Maryland (MD portion).

I. Urbanized Area Formula Funds Used for Highway Purposes

Urbanized Area Formula funds apportioned to a TMA which cannot be used for the payment of operating expenses (i.e., capital funds) are also available for highway projects if the following three conditions are met: (1) Such use must be approved by the MPO after appropriate notice and opportunity for comment and appeal are provided to affected transit providers; (2) in the determination of the Secretary, such funds are not needed for investments required by the Americans with Disabilities Act of 1990; and (3) funds may be available for highway projects under title 23, U.S.C., only if funds used for the State or local share of such highway projects are eligible to fund either highway or transit projects.

Urbanized Area Formula funds which are designated for highway projects will be transferred to and administered by the Federal Highway Administration (FHWA). The MPO should notify FTA of their intent to program FTA funds for highway purposes.

V. Nonurbanized Area Formula Program (Formerly Section 18) and Rural Transit Assistance (RTAP) Program

A. Nonurbanized Area Formula Program

The fiscal year 1995 Nonurbanized Area Formula apportionments total $132,752,946. The State apportionments are displayed on Table 3. A total of $132,926,631 is appropriated for the Nonurbanized Area Formula Program. After the one-half percent set-aside ($664,633), the fiscal year 1995 apportionment also includes $490,948 in prior year deobligated funds which have become available for reapportionment under this program. These funds provide capital, operating and administrative assistance for areas less than 50,000 in population.

Each State must spend no less than 15 percent of its fiscal year 1995 Nonurbanized Area Formula apportionment for the development and support of intercity bus transportation, unless the Governor certifies to the Secretary that the intercity bus service needs of the State are being adequately met. Fiscal year 1995 Nonurbanized Area Formula grant applications must reflect this level of programming for intercity bus or include a certification from the Governor. The population figures used in calculating these apportionments are from the 1990 Census.

B. RTAP Program

The fiscal year 1995 RTAP allocations to the States totaling $4,612,500 are also displayed on Table 3. The funds are allocated to the States to undertake research, training, technical assistance, and other support services to meet the needs of transit operators in nonurbanized areas. These funds are to be used in conjunction with the States' administration of the Nonurbanized Area Formula Program.

VI. Elderly and Persons With Disabilities Program (Formerly Section 16)

A total of $59,152,156 is apportioned to the States for fiscal year 1995 under the Elderly and Persons with Disabilities Program. Table 4 shows each State's apportionment.

The formula for apportioning these funds uses 1990 Census population data for persons aged sixty-five and over and for persons with disabilities.

The funds provide capital assistance for transportation for elderly persons and persons with disabilities. Eligible capital expenses may include, at the option of the recipient, the acquisition of transportation services under a contract, lease, or other arrangement.

While the assistance is intended primarily for private non-profit organizations, public bodies that coordinate services for the elderly and persons with disabilities, or any public body that certifies to the State that non-profit organizations in the area are not readily available to carry out the service, may receive these funds.

These program funds may be transferred by the Governor to supplement the Urbanized Area Formula or Nonurbanized Area Formula capital funds during the last 90 days of the fiscal year.

VII. Title 23 Interstate Substitute Transit Program

A total of $48,030,000 is appropriated for the Interstate Substitute Transit Program. Of that amount, $9,500,000 is earmarked for a substitute transit project

in Milwaukee, Wisconsin. The balance of $38,530,000 is appropriated for other transit projects which have been substituted for withdrawn interstate highway segments. The funds are apportioned by formula which reflects the remaining costs to complete each withdrawal area's substitute transit projects. After the one-half percent set-aside ($192,585), $38,337,415 of the $38,530,000 remains for projects. This completes the funding for the Interstate Substitute Transit Program for these withdrawal areas. Table 5 displays the apportionment of these funds.

In addition to the funds directly appropriated for Interstate Substitute Transit projects, Substitute Highway funds apportioned to a withdrawal area may be transferred from FHWA to FTA to be used for transit projects.

VIII. Surface Transportation Program "Flexible" Funds Used for Transit Purposes

A. Transfer Process

"Flexible" DOT funds, such as Surface Transportation Program (STP) funds, Congestion Mitigation and Air Quality (CMAQ) funds, or others, which are designated for use on transit projects, are transferred from the FHWA to FTA for project approval. Flexible funds programmed for transit projects must result from the local and state planning and programming process, and must be contained in an approved State Transportation Improvement Program (STIP) before the funds can be transferred. In order to initiate the transfer process, the grantee must submit a completed application to the FTA Regional Office, and must notify the state highway/transportation agency that it has submitted an application which requires a transfer of funds. Once the state highway/transportation agency determines that the state has sufficient obligation authority, it must notify FHWA that the funds are to be used for transit purposes and request that they be obligated by FHWA as a transfer project to FTA. The flexible funds transferred to FTA will be placed in an urbanized area or state account under one of the three existing formula programs—Urbanized Area, Elderly and Persons with Disabilities, or Nonurbanized Area.

They are then treated as FTA formula funds, although they will retain a special identifying code. The flexible funds may be used for any non-operating purpose eligible under these FTA programs. All FTA requirements are applicable to transferred funds. Flexible funds should be combined with regular FTA formula funds in a single annual grant application.

B. Matching Share for Flexible Funds

The provisions of Title 23, U.S.C. regarding the non-Federal share apply to Title 23 funds used for transit projects. Thus, flexible funds transferred to FTA retain the same matching share that such funds would have if used for highway purposes and administered by the FHWA.

There are three instances in which a higher than 80 percent Federal share would be maintained. First, in States with large areas of Indian and certain public domain lands, and National Forests, parks and monuments, the local share for highway projects is determined by a sliding scale rate, calculated based on the percentage of public lands within that state. This sliding scale, which permits a greater Federal share, but not to exceed 95 percent, is applicable to transit projects funded with flexible funds in these public land states. FHWA develops the sliding scale matching ratios for the increased Federal share.

Additionally, commuter carpooling and vanpooling projects and transit safety projects using flexible funds administered by FTA may retain the same 100 percent Federal share that would be allowed for ride-sharing or safety projects administered by the FHWA. The 100 percent safety projects are subject to a nationwide ten percent program limitation.

C. Other Funds Transferred to FTA

Certain demonstration projects authorized under Title 23 are specified to be used for transit projects and are more appropriately administered by FTA. In such cases, FHWA has transferred the funds to FTA for administration. Since these funds are not STP flexible funds, they are transferred into the appropriate Capital Program category (Bus, New Starts, or Fixed Guideway Modernization) for obligation and are administered as Capital projects.

IX. Capital Program (Formerly Section 3)

A. Fixed Guideway Modernization Formula

Fixed Guideway Modernization funds are allocated by formula. Statutory percentages were established to allocate the first $497,700,000 to 11 fixed guideway areas. The next $70,000,000 is allocated one-half to these 11 urbanized areas and one-half to other urbanized areas with fixed guideways which are at least seven years old on the basis of the Urbanized Area Formula Program fixed guideway tier formula factors. The remaining funds are allocated to all of these urbanized areas as one universe. For fiscal year 1995, $725,000,000 was appropriated for fixed guideway modernization. After the three-quarter percent set-aside ($5,437,500), $719,562,500 is available for apportionment to the specified urbanized areas for Fixed Guideway Modernization funding.

Table 6 displays these apportionments. Fixed Guideway Modernization funds apportioned under this section must be used for capital projects to modernize or improve fixed guideway systems.

All urbanized areas with fixed guideway systems which are at least seven years old are eligible to receive Fixed Guideway Modernization funds. A request for the start-up service dates for fixed guideways has been incorporated into the Section 15 data reporting system to ensure that all eligible fixed guideway data is included in the calculation of these apportionments. A threshold level of more than one mile of fixed guideway is required to receive Fixed Guideway Modernization funds. Therefore, urbanized areas reporting less than one mile of fixed guideway mileage under Section 15 are not included.

B. New Starts

The fiscal year 1995 appropriation for New Starts is $646,670,000. These funds are entirely earmarked for projects specified within the 1995 DOT Appropriations Act. After the three-quarter percent set-aside ($4,850,025), $641,819,975 remains available for allocation to areas. Table 7 displays the allocations by area and also shows prior year unobligated earmarks for New Starts.

C. Bus

The fiscal year 1995 appropriation for Bus is $353,330,000 for the purchase of buses, bus-related equipment and paratransit vehicles, and for the construction of bus-related facilities. After the three-quarter percent set-aside ($2,649,975) for project management oversight, $350,680,025 remains available for projects. The ISTEA earmarked $12,000,000 in Bus funding for two bus projects in fiscal year 1995. The Conference Report accompanying the 1995 DOT Appropriations Act earmarked an additional $316,330,000 to specified states or localities for bus and bus-related capital projects. FTA administrative commitment of fiscal year 1995 funds to one full funding grant agreement totals $1,700,000. Thus, $20,650,025 remains available for discretionary allocation by the Federal Transit Administrator. Table 8 displays

the allocations of earmarked fiscal year 1995 Bus funds by area and also shows prior year unobligated earmarks for the Bus Program.

X. Unit Values of Data for the Urbanized Area Formula and Nonurbanized Area Formula Programs, and Fixed Guideway Modernization Formula

For technical assistance purposes, the dollar unit values of data derived from the computations of the Urbanized Area Formula and Nonurbanized Area Formula Programs, and the Fixed Guideway Modernization Formula apportionments are included in this Notice on Table 10. To determine how a particular apportionment amount was developed, areas may multiply their population, population density, and Section 15 data by these unit values.

XI. Metropolitan Planning and State Planning and Research Programs (Formerly Sections 8 and 26(a)(2))

A. Metropolitan Planning Urbanized Area Program

The fiscal year 1995 Metropolitan Planning apportionments to States for MPOs to be used in urbanized areas total $41,512,500. A basic allocation of 80 percent of this amount ($33,210,000) is distributed to the States based on urbanized area population for State distribution to each urbanized area, or parts thereof, within each State. A supplemental allocation of the remaining 20 percent ($8,302,500) is also provided to the States based on an FTA administrative formula to address planning needs in the larger, more complex urbanized areas. Table 9 contains the final State apportionments for the combined basic and supplemental allocations. Each State, in cooperation with the MPOs, must develop an allocation formula for the combined apportionment which distributes these funds to MPOs representing urbanized areas, or parts thereof, within the State. This formula, which must be approved by the FTA, must ensure to the maximum extent practicable that no MPO is allocated less than the amount it received by administrative formula under the Metropolitan Planning Program in fiscal year 1991 (minimum MPO allocation). Each State formula must include a provision for the minimum MPO allocation. Where the State and MPOs desire to use a new formula not previously approved by FTA, it must be submitted to FTA for prior approval.

B. State Planning and Research Program

The fiscal year 1995 apportionments for the State Planning and Research Program total $8,475,000. Final State apportionments for this program are also contained on Table 9. This is the fourth year of a consolidated program which is apportioned to the States for the purpose of such activities as planning, technical studies and assistance, demonstrations, management training, and cooperative research. In addition, a State may authorize a portion of these funds to be used to supplement planning funds allocated by the State to its urbanized areas, as the respective State deems appropriate.

C. Data Used for Metropolitan Planning and State Planning and Research Apportionments

Population data from the 1990 Census is used in calculating these apportionments. The Metropolitan Planning funding provided to urbanized areas in each State by administrative formula in fiscal year 1991 was used as a "hold harmless" base in calculating funding to each State.

Please note that while the fiscal year 1995 apportionment amount remains unchanged from the fiscal year 1994 apportionment, an adjustment has been made to more accurately reflect the distribution of population within a particular bi-state urbanized area. This adjustment may result in a slight change to each State's individual apportionment from the fiscal year 1994 amount.

XI. Period of Availability of Funds

The funds apportioned under the Urbanized Area Formula Program, Fixed Guideway Modernization Formula, Metropolitan Planning and State Planning and Research Programs in this Notice will remain available to be obligated by FTA to recipients for three (3) fiscal years following fiscal year 1995. Any of these apportioned funds unobligated at the close of business on September 30, 1998, will revert to FTA for reapportionment under these respective programs. Funds apportioned to nonurbanized areas under the Nonurbanized Area Formula Program, including RTAP funds, will remain available for two (2) fiscal years following fiscal year 1995. Any such funds remaining unobligated at the close of business on September 30, 1997, will revert to FTA for reapportionment among the States. Funds allocated to States under the Elderly and Persons with Disabilities Program in this Notice must be obligated by September 30, 1995. Any such funds remaining unobligated as of this date will revert to FTA for reapportionment among the States. Fiscal year 1995 Title 23 Interstate Substitute Transit funds are available until expended. The 1995 DOT Appropriations Act includes a provision requiring that fiscal year 1995 New Starts and Bus funds not obligated for their original purpose as of September 30, 1997, shall be made available for other discretionary projects. A similar provision in the 1994 DOT Appropriations Act required that fiscal year 1994 and prior year Bus and New Start funds that are not obligated by September 30, 1996, shall also be made available for other discretionary projects.

XIII. Notice of Pre-Award Authority to Incur Project Costs

A. Background

FTA is engaged in an ongoing effort to streamline and simplify the administration of its programs. To this end, the agency has expanded the authority extended to grantees to incur costs for operating assistance projects prior to grant award to cover planning and capital costs as well. In fiscal year 1994 FTA extended this authority to non-operating projects funded with current year apportioned formula funds. This automatic pre-award spending authority permitted a grantee to incur costs on an eligible transit capital or planning project without prejudice to possible future Federal participation in the cost of the project or projects.

B. Expanded Coverage

Because this provision has worked so well to reduce the paperwork burden on both the grantee and FTA regional offices, effective as of October 1, 1994, the FTA is further broadening this authority. Authority to incur costs for Fixed Guideway Modernization Formula, Metropolitan Planning, Urbanized Area Formula, Elderly and Persons with Disabilities, Nonurbanized Area Formula, State Planning and Research, and Title 23 Interstate Substitute Transit projects in advance of possible future Federal participation is extended to apply to fiscal year 1995 FTA funds apportioned in this Notice for the programs listed above, as well as funds to be apportioned in fiscal years 1996 and 1997. Carryover amounts for these programs are also included in this authority. This pre-award authority is also extended to projects intended to be funded with STP or CMAQ funds transferred to FTA in fiscal years 1995 and 1996, provided that the projects are contained in an approved STIP. The

flexible funds would no longer have to be transferred to FTA before the authority could be used. The two-year limit for these flexible funds corresponds to the more rigorous financial constraint contained in the metropolitan planning regulation for non-attainment and maintenance areas. The authority does not apply to New Starts or Bus.

C. Conditions

Similar to FTA's Letter of No Prejudice (LONP) authority, the conditions under which this authority may be utilized are specified below:

(1) This pre-award authority is not a legal or moral commitment that the project(s) will be approved for FTA assistance or that the FTA will obligate Federal funds. Furthermore, it is not a legal or moral commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).

(2) All FTA statutory, procedural, and contractual requirements must be met.

(3) No action will be taken by the grantee which prejudices the legal and administrative findings which the Federal Transit Administrator must make in order to approve a project.

(4) Local funds expended by the grantee pursuant to and after the date of this authority will be eligible for credit toward local match or reimbursement if the FTA later makes a grant for the project(s) or project amendment(s).

(5) The Federal amount of any future FTA assistance to the grantee for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal-local match ratio at the time the funds are obligated.

(6) For regular FTA formula funds to which this authority applies, the authority expires with the lapsing of fiscal year 1997 funds. For flexible funds transferred from FHWA, the authority expires with the lapsing of fiscal year 1996 funds.

D. Environmental and Other Requirements

FTA emphasizes that all of the Federal grant requirements must be met for the project to remain eligible for Federal funding. Some of these requirements must be met before pre-award costs are incurred, notably the requirements of the National Environmental Policy Act (NEPA). Compliance with NEPA and other environmental laws or executive orders (e.g., protection of parklands, wetlands, historic properties) must be completed before state or local funds are advanced for a project expected to be subsequently funded with FTA funds. Depending on which class the project is included under in FTA's environmental regulations (23 CFR 771) the grantee may not advance the project beyond planning and preliminary engineering before FTA has approved either a categorical exclusion (refer to 23 CFR 771.117(d)), a finding of no significant impact, or a final environmental impact statement. The conformity requirements of the Clean Air Act (40 CFR 51) also must be fully met before the project may be advanced with non-Federal funds.

Similarly, Federal procurement procedures, as well as the whole range of Federal requirements, must be followed for projects in which Federal funding will be sought in the future. Failure to follow any such requirements could make the project ineligible for Federal funding. In short, this increased administrative flexibility requires a grantee to make certain that no Federal requirements are circumvented thereby. If a grantee has questions or concerns regarding the environmental requirements, or any other Federal requirements that must be met before incurring costs, it should contact the appropriate regional office.

Before an applicant may incur costs either for activities expected to be funded by Bus or New Start funds, or for activities requiring funding beyond fiscal year 1997, it must first obtain a written LONP from the FTA. To obtain an LONP, a grantee must submit a written request accompanied by adequate information and justification to the appropriate FTA regional office. FTA will consider the request in light of its "Letter of No Prejudice Policy" (47 FR 46956, October 21, 1982).

XIV. Electronic Grant Making and Management (EGMM) Initiative—Fiscal Year 1995 and Beyond

As a result of the National Performance Review and the FTA strategic planning process, the FTA has two initiatives designed to improve customer service and efficiency of program delivery: (1) On-Line Grantee Program—available to all grantee agencies which can access the FTA Grants Management Information System (GMIS) mainframe computer system via a toll free phone connection. This program was initially designed for "inquiry only" purposes. However, this program will be expanded on a case-by-case basis to allow grantees to make annual certifications and assurances through GMIS and conduct required quarterly financial status and narrative grant progress reporting. (2) Electronic Grant Making and Management Pilot Program—participation in the fiscal year 1995 pilot program is limited to the 21 grantee agencies (including Greater Hartford Transit District, Massachusetts Bay Transportation Authority, Central New York Regional Transportation Authority, New York Metropolitan Transportation Authority, Baltimore Mass Transit Administration, Lehigh and North Hampton Transit Authority, City of Montgomery Area Transit System, Hillsborough Area Regional Transit Authority, Chicago Transit Authority, Central Ohio Transit Authority, Metropolitan Transportation Authority of Harris County, New Mexico State Highway and Transportation Department, Bi-State Development Agency—St. Louis, Missouri Highway and Transportation Department, Montana Department of Transportation, Denver Regional Transportation District, City and County of San Francisco—Public Utilities Commission, Los Angeles County Metropolitan Transportation Authority, King County Department of Metropolitan Services, Washington State Department of Transportation, and National Easter Seal Society). During the pilot program (October 1, 1994 through September 30, 1995) these grantees will apply for and manage grants at their computer stations connected to the FTA GMIS computer using a modem and toll free phone connection. The purpose of this initiative is to streamline the FTA grant making and management process through a paperless electronic grant application, review, approval, acceptance and management process. DOL has agreed to participate in the program and receive requests for Labor Protection Certification under 49 U.S.C. 5333(b) of projects as well as issue Labor Protection Certifications electronically for the EGMM Pilot Program participants.

Quarterly evaluation will be conducted of both the On-Line Grantee Program and the EGMM Pilot Program. Also during fiscal year 1995 FTA will implement the annual certifications and assurances for all grantees in which one signature will replace the continued validity statement and separate certifications and assurances. All EGMM grantee participants and On-Line Grantee participants on a case-by-case basis will be able to provide these certifications electronically. In preparation of the EGMM initiative, FTA has already issued a Master Agreement that replaces Part I and portions of Part II of the current FTA grant agreement.

Upon the completion of the EGMM Pilot Program of fiscal year 1995, FTA intends to expand the EGMM Program to include additional grantee agencies during fiscal year 1996. FTA also has

several activities under consideration to expand the functional content of EGMM. The kinds of activities under consideration include a mechanism to facilitate electronic statewide transportation improvement programs, electronic unified planning work programs, and an electronic library. The FTA would like your comments and suggestions on additional areas FTA could facilitate electronic interface to better serve our customers. Please write your regional office with your suggestions on the FTA EGMM Pilot Program and On-Line Grantee Program.

XV. Quartley Approval of Grants

The FTA has established a quarterly approval and release cycle for processing grants. All Urbanized Area Formula, Nonurbanized Area Formula, Elderly and Persons with Disabilities, Capital, Metropolitan Planning, State Planning and Research, and Title 23 Interstate Substitute Transit grants are processed on a quarterly basis. This includes Urbanized Area Formula, Nonurbanized Area Formula, or Elderly and Persons with Disabilities grants using STP or CMAQ funds.

If completed applications are submitted to the appropriate FTA Regional Office no later than the first business day of the quarter, FTA will award grants by the last business day of the quarter.

In order to expedite the grant approval process within the quarterly approval structure, grants which are complete and have received the required Labor Protection Certification may be approved before the end of the quarter. Applications for the first quarter should be submitted to the FTA Regional Office within five business days of this Notice. The first-quarter grants will be released on or before December 30, 1994. There are only two factors which would delay FTA's approval of the project beyond the end of a quarter. First is a failure by DOL to issue a Labor Protection Certification where such certification is a prerequisite to a grant approval, and second is the failure of FHWA to actually transfer flexible funds.

For an application to be considered complete, all required activities such as inclusion of the project in a locally approved Transportation Improvement Program (TIP), a Federally approved State Transportation Improvement Program (STIP), intergovernmental reviews, environmental reviews, all applicable civil rights, anti-drug, and clean air requirements, and submission of all requisite certifications and documentation must be completed. The application must be in approvable form with all required documentation and submissions on hand, except for the Labor Protection Certification which is issued by DOL. Incomplete applications will not be processed, but if the missing components are supplied, will be considered in the next quarter.

It is the policy of FTA to expedite grant application reviews and speed program delivery by reducing the number of grant applications. To this end, FTA strongly encourages grant applicants to submit only one application per fiscal year for each formula program. The single application should contain the fiscal year's capital (including flexible funds), planning and operating elements.

XV. Grant Application Procedures

All applications for FTA funds should be submitted to the appropriate FTA Regional Office. Formula grant applications should be prepared in conformance with the following FTA Circulars: Urbanized Area Formula—C9030.1A, September 18, 1987; Nonurbanized Area Formula—C9040.1C, November 3, 1992; and Elderly and Persons with Disabilities—C9070.1C, December 23, 1992. Applications for STP "flexible" fund grants should be prepared in the same manner as the apportioned funds under the Urbanized Area Formula, Nonurbanized Area Formula, or Elderly and Persons with Disabilities Programs. Guidance on preparation of applications for Capital, Metropolitan Planning, State Planning and Research, and Title 23 funds may be obtained from each FTA Regional Office. Copies of circulars are also available from Regional Offices.

Issued on: October 5, 1994.

Gordon J. Linton,

Administrator.

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TABLE 1

FTA FISCAL YEAR 1995 APPROPRIATIONS FOR GRANT PROGRAMS

SOURCES OF FUNDS		TOTAL AVAILABLE
URBANIZED AREA FORMULA AND NONURBANIZED AREA FORMULA PROGRAMS (FORMERLY SECTIONS 9 AND 18)	$2,416,847,844	
URBANIZED AREA FORMULA PROGRAM		
94.5% of Total Available for Urbanized Area Formula and Nonurbanized Area Formula Programs		$2,283,921,213
Less 1/2% Set Aside		(11,419,606)
Reapportioned Funds Added		24,351,386
Total Apportioned		$2,296,852,993
Operating Assistance Limitation		710,000,000
NONURBANIZED AREA FORMULA PROGRAM		
5.50% of Total Available for Urbanized Area Formula and Nonurbanized Area Formula Programs		$132,926,631
Less 1/2% Set Aside		(664,633)
Reapportioned Funds Added		490,948
Total Apportioned		$132,752,946
RTAP PROGRAM		$4,612,500
ELDERLY AND PERSONS WITH DISABILITIES PROGRAM (FORMERLY SECTION 16)		$59,152,156
INTERSTATE SUBSTITUTE TRANSIT PROGRAM		
Apportioned		$38,337,415
Earmark		9,500,000
1/2% Set Aside		192,585
Total		$48,030,000
CAPITAL PROGRAM (FORMERLY SECTION 3)	$1,725,000,000	
FIXED GUIDEWAY MODERNIZATION		$725,000,000
Less 3/4% Set Aside		(5,437,500)
Total Apportioned		$719,562,500
NEW STARTS		$646,670,000
Less 3/4% Set Aside		(4,850,025)
Total Allocated		$641,819,975
BUS		
Conference Earmarks		$316,330,000
ISTEA Allocation		12,000,000
Administrative Commitment		1,700,000
3/4% Set Aside		2,649,975
Unallocated		20,650,025
Total		$353,330,000
METROPOLITAN PLANNING PROGRAM (FORMERLY SECTION 8)		$41,512,500
STATE PLANNING AND RESEARCH PROGRAM (FORMERLY SECTION 26(a)(2))		$8,475,000

TABLE 2

FTA FY 1995 URBANIZED AREA FORMULA APPORTIONMENTS (FORMERLY SECTION 9)

AMOUNTS APPORTIONED TO URBANIZED AREAS OVER 1,000,000 IN POPULATION

URBANIZED AREA	TOTAL APPORTIONMENT	OPERATING ASSISTANCE LIMITATIONS
Atlanta, GA	30,853,100	5,377,897
Baltimore, MD	28,155,535	8,607,760
Boston, MA	62,489,857	16,161,023
Chicago, IL-Northwestern IN	157,922,848	44,774,098
Cincinnati, OH-KY	11,364,618	4,662,601
Cleveland, OH	19,247,760	8,531,014
Dallas-Fort Worth, TX	29,042,141	7,650,143
Denver, CO	17,630,699	5,222,695
Detroit, MI	29,756,895	18,939,357
Ft Lauderdale-Hollywood-Pompano Bch, FL	16,117,493	6,495,530
Houston, TX	33,544,917	8,038,691
Kansas City, MO-KS	8,256,969	3,950,725
Los Angeles, CA	146,958,914	50,514,824
Miami-Hialeah, FL	33,785,151	7,419,989
Milwaukee, WI	14,179,096	4,834,477
Minneapolis-St. Paul, MN	20,339,551	6,446,045
New Orleans, LA	12,841,873	5,847,489
New York, NY-Northeastern NJ	503,952,306	116,988,795
Norfolk-Virginia Beach-Newport News, VA	9,453,243	3,714,354
Philadelphia, PA-NJ	92,133,082	28,162,314
Phoenix, AZ	17,886,046	4,164,891
Pittsburgh, PA	27,100,916	8,406,413
Portland-Vancouver, OR-WA	17,160,285	3,895,132
Riverside-San Bernardino, CA	13,372,816	2,226,275
Sacramento, CA	10,280,058	3,078,919
San Antonio, TX	15,255,611	4,051,309
San Diego, CA	28,200,559	6,464,385
San Francisco-Oakland, CA	93,286,228	17,212,185
San Jose, CA	23,462,557	5,847,901
San Juan, PR	20,768,989	6,646,587
Seattle, WA	38,924,167	5,461,855
St. Louis, MO-IL	17,715,054	8,486,476
Tampa-St. Petersburg-Clearwater, FL	13,097,224	4,620,580
Washington, DC-MD-VA	76,633,018	14,941,841
TOTAL	$1,691,169,576	$457,844,570

TABLE 2

FTA FY 1995 URBANIZED AREA FORMULA APPORTIONMENTS (FORMERLY SECTION 9)

AMOUNTS APPORTIONED TO URBANIZED AREAS 200,000 TO 1,000,000 IN POPULATION

URBANIZED AREA	TOTAL APPORTIONMENT	OPERATING ASSISTANCE LIMITATIONS
Akron, OH	4,705,066	2,038,919
Albany-Schenectady-Troy, NY	5,622,949	1,977,528
Albuquerque, NM	4,511,004	1,366,597
Allentown-Bethlehem-Easton, PA-NJ	3,537,503	2,067,571
Anchorage, AK	1,924,961	674,752
Ann Arbor, MI	3,013,027	866,941
Augusta, GA-SC	1,634,180	690,609
Austin, TX	9,190,501	1,300,541
Bakersfield, CA	2,934,127	847,997
Baton Rouge, LA	2,329,881	1,133,181
Birmingham, AL	4,646,189	2,081,570
Bridgeport-Milford, CT	4,966,857	1,807,186
Buffalo-Niagara Falls, NY	10,302,728	5,304,656
Canton, OH	1,583,599	998,478
Charleston, SC	2,462,219	946,659
Charlotte, NC	4,779,757	1,141,215
Chattanooga, TN-GA	2,002,751	860,319
Colorado Springs, CO	3,025,185	854,046
Columbia, SC	2,179,937	966,439
Columbus, GA-AL	1,418,317	724,121
Columbus, OH	9,181,852	3,847,363
Corpus Christi, TX	2,942,724	759,926
Davenport-Rock Island-Moline, IA-IL	2,406,053	988,782
Dayton, OH	10,088,435	2,560,119
Daytona Beach, FL	1,761,027	686,627
Des Moines, IA	2,191,659	963,019
Durham, NC	2,223,298	707,724
El Paso, TX-NM	6,716,168	1,575,108
Fayetteville, NC	1,219,519	651,291
Flint, MI	3,695,597	1,339,600
Fort Myers-Cape Coral, FL	1,744,174	500,170
Fort Wayne, IN	1,597,817	955,204
Fresno, CA	4,260,150	1,285,453
Grand Rapids, MI	3,549,803	1,358,672
Greenville, SC	1,699,589	656,714
Harrisburg, PA	2,067,158	991,809
Hartford-Middletown, CT	7,402,112	2,012,717
Honolulu, HI	17,915,263	2,492,706
Indianapolis, IN	6,918,141	3,349,275
Jackson, MS	1,583,455	791,760
Jacksonville, FL	6,536,670	1,774,593
Knoxville, TN	1,998,507	789,287
Lansing-East Lansing, MI	2,727,695	1,018,872
Las Vegas, NV	8,069,513	1,209,467
Lawrence-Haverhill, MA-NH	2,888,547	748,707
Lexington-Fayette, KY	1,699,893	1,135,745
Little Rock-North Little Rock, AR	2,078,221	908,156
Lorain-Elyria, OH	1,074,910	685,071
Louisville, KY-IN	8,836,470	3,420,637

TABLE 2

FTA FY 1995 URBANIZED AREA FORMULA APPORTIONMENTS (FORMERLY SECTION 9)

AMOUNTS APPORTIONED TO URBANIZED AREAS 200,000 TO 1,000,000 IN POPULATION

URBANIZED AREA	TOTAL APPORTIONMENT	OPERATING ASSISTANCE LIMITATIONS
Madison, WI	4,066,264	873,792
McAllen-Edinburg-Mission, TX	1,117,142	725,938
Melbourne-Palm Bay, FL	2,824,200	617,199
Memphis, TN-AR-MS	7,453,858	3,170,208
Mobile, AL	2,030,694	883,423
Modesto, CA	2,405,044	869,463
Montgomery, AL	1,323,616	898,921
Nashville, TN	4,425,532	1,469,835
New Haven-Meriden, CT	7,726,325	2,030,745
Ogden, UT	2,455,607	613,775
Oklahoma City, OK	4,280,510	2,034,321
Omaha, NE-IA	4,794,331	2,086,333
Orlando, FL	8,589,635	1,535,170
Oxnard-Ventura, CA	3,285,552	1,190,584
Pensacola, FL	1,566,212	665,355
Peoria, IL	1,864,795	927,044
Providence-Pawtucket, RI-MA	12,961,528	4,167,486
Provo-Orem, UT	2,202,632	714,481
Raleigh, NC	2,252,469	641,137
Reno, NV	3,235,022	739,112
Richmond, VA	5,329,204	1,698,183
Rochester, NY	6,015,280	2,722,231
Rockford, IL	1,564,164	853,103
Salt Lake City, UT	10,440,200	2,153,075
Sarasota-Bradenton, FL	3,052,553	1,111,440
Scranton-Wilkes-Barre, PA	2,820,331	1,527,413
Shreveport, LA	2,171,425	925,692
South Bend-Mishawaka, IN-MI	1,966,087	1,011,234
Spokane, WA	4,718,485	981,259
Springfield, MA-CT	5,406,710	1,782,775
Stockton, CA	2,593,822	1,177,169
Syracuse, NY	4,256,807	1,671,369
Tacoma, WA	7,570,494	1,366,166
Toledo, OH-MI	4,754,522	1,973,797
Trenton, NJ-PA	3,723,533	1,742,711
Tucson, AZ	6,978,924	1,460,128
Tulsa, OK	3,741,525	1,382,471
West Palm Bch-Boca Raton-Delray Bch, FL	10,609,876	1,455,070
Wichita, KS	2,555,695	1,196,000
Wilmington, DE-NJ-MD-PA	4,786,786	1,768,875
Worcester, MA-CT	2,787,395	1,021,031
Youngstown-Warren, OH	2,052,635	1,572,947
TOTAL	$ 384,602,579	$ 128,222,360

TABLE 2

FTA FY 1995 URBANIZED AREA FORMULA APPORTIONMENTS (FORMERLY SECTION 9)

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	TOTAL APPORTIONMENT	OPERATING ASSISTANCE LIMITATIONS
ALABAMA:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 4,152,194	$ 2,627,414
Anniston, AL	400,507	309,307
Auburn-Opelika, AL	321,327	172,829
Decatur, AL	366,733	203,229
Dothan, AL	308,026	177,738
Florence, AL	429,130	313,336
Gadsden, AL	379,278	310,743
Huntsville, AL	1,204,001	673,312
Tuscaloosa, AL	743,192	466,920
ALASKA:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 0	$ 0
ARIZONA:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 659,293	$ 275,954
Yuma, AZ-CA (AZ)	659,293	275,954
ARKANSAS:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 1,586,437	$ 1,064,899
Fayetteville-Springdale, AR	437,828	224,459
Fort Smith, AR-OK (AR)	596,004	367,002
Pine Bluff, AR	402,768	359,248
Texarkana, TX-AR (AR)	149,837	114,190
CALIFORNIA:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 24,300,762	$ 9,068,338
Antioch-Pittsburg, CA	1,374,266	460,848
Chico, CA	600,032	246,798
Davis, CA	728,405	284,013
Fairfield, CA	884,670	340,895
Hemet-San Jacinto, CA	738,076	260,930
Hesperia-Apple Valley-Victorville, CA	941,565	354,584
Indio-Coachella, CA	446,294	168,093
Lancaster-Palmdale, CA	1,583,746	216,582
Lodi, CA	620,031	233,559
Lompoc, CA	380,792	143,410
Merced, CA	676,978	250,756
Napa, CA	707,369	355,637

TABLE 2

FTA FY 1995 URBANIZED AREA FORMULA APPORTIONMENTS (FORMERLY SECTION 9)

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	TOTAL APPORTIONMENT	OPERATING ASSISTANCE LIMITATIONS
CALIFORNIA:		
Palm Springs, CA	881,257	240,919
Redding, CA	509,557	199,527
Salinas, CA	1,340,922	564,256
San Luis Obispo, CA	635,014	239,212
Santa Barbara, CA	2,074,471	933,498
Santa Cruz, CA	1,072,677	502,276
Santa Maria, CA	975,939	302,685
Santa Rosa, CA	1,892,234	598,754
Seaside-Monterey, CA	1,271,542	695,846
Simi Valley, CA	1,203,605	408,572
Vacaville, CA	730,678	275,231
Visalia, CA	834,593	300,723
Watsonville, CA	459,791	173,185
Yuba City, CA	733,646	315,463
Yuma, AZ-CA (CA)	2,612	2,086
COLORADO:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 4,477,651	$ 2,452,307
Boulder, CO	996,346	550,011
Fort Collins, CO	829,859	392,784
Grand Junction, CO	472,487	252,675
Greeley, CO	663,736	378,173
Longmont, CO	604,857	227,846
Pueblo, CO	910,366	650,818
CONNECTICUT:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 14,900,302	$ 6,057,638
Bristol, CT	705,745	397,057
Danbury, CT-NY (CT)	2,512,829	656,403
New Britain, CT	1,321,505	834,814
New London-Norwich, CT	1,063,419	711,916
Norwalk, CT	2,657,384	901,951
Stamford, CT-NY (CT)	3,367,322	1,354,718
Waterbury, CT	3,272,098	1,200,779
DELAWARE:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 337,804	$ 127,219
Dover, DE	337,804	127,219

TABLE 2

FTA FY 1995 URBANIZED AREA FORMULA APPORTIONMENTS (FORMERLY SECTION 9)

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	TOTAL APPORTIONMENT	OPERATING ASSISTANCE LIMITATIONS
FLORIDA:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 10,295,542	$ 4,203,966
Deltona, FL	342,322	128,912
Fort Pierce, FL	820,026	273,621
Fort Walton Beach, FL	794,909	344,540
Gainesville, FL	1,018,729	469,129
Kissimmee, FL	474,493	178,719
Lakeland, FL	1,041,449	460,722
Naples, FL	685,415	195,824
Ocala, FL	460,424	196,140
Panama City, FL	690,971	313,333
Punta Gorda, FL	451,853	170,172
Spring Hill, FL	345,418	130,087
Stuart, FL	602,696	226,994
Tallahassee, FL	1,161,298	525,148
Titusville, FL	332,430	125,194
Vero Beach, FL	421,010	158,554
Winter Haven, FL	652,099	306,877
GEORGIA:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 4,507,646	$ 2,893,011
Albany, GA	558,328	421,508
Athens, GA	535,309	263,272
Brunswick, GA	308,051	116,009
Macon, GA	1,000,719	723,731
Rome, GA	314,041	199,566
Savannah, GA	1,309,331	919,870
Warner Robins, GA	481,867	249,055
HAWAII:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 1,198,021	$ 634,470
Kailua, HI	1,198,021	634,470
IDAHO:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 2,371,092	$ 1,079,678
Boise City, ID	1,450,905	626,530
Idaho Falls, ID	520,121	195,911
Pocatello, ID	400,066	257,237

TABLE 2

FTA FY 1995 URBANIZED AREA FORMULA APPORTIONMENTS (FORMERLY SECTION 9)

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	TOTAL APPORTIONMENT	OPERATING ASSISTANCE LIMITATIONS
ILLINOIS:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 10,860,795	$ 7,161,883
Alton, IL	586,948	497,046
Aurora, IL	1,643,875	964,618
Beloit, WI-IL (IL)	75,017	33,997
Bloomington-Normal, IL	945,580	510,193
Champaign-Urbana, IL	1,334,399	822,351
Crystal Lake, IL	535,773	201,787
Decatur, IL	751,135	595,709
Dubuque, IA-IL (IL)	17,497	11,687
Elgin, IL	1,185,813	849,057
Joliet, IL	1,371,140	1,271,439
Kankakee, IL	538,134	350,128
Round Lake Beach-McHenry, IL-WI (IL)	780,880	279,434
Springfield, IL	1,094,604	774,437
INDIANA:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 6,334,487	$ 4,084,989
Anderson, IN	512,005	404,379
Bloomington, IN	764,042	383,957
Elkhart-Goshen, IN	765,760	384,673
Evansville, IN-KY (IN)	1,418,568	949,580
Kokomo, IN	515,609	353,455
Lafayette-West Lafayette, IN	1,025,063	585,355
Muncie, IN	753,549	580,784
Terre Haute, IN	579,891	442,806
IOWA:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 3,448,414	$ 2,370,420
Cedar Rapids, IA	1,071,653	723,435
Dubuque, IA-IL (IA)	521,614	403,593
Iowa City, IA	617,460	276,407
Sioux City, IA-NE-SD (IA)	570,284	415,451
Waterloo-Cedar Falls, IA	667,403	551,534
KANSAS:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 1,674,314	$ 1,013,294
Lawrence, KS	634,029	290,205
St. Joseph, MO-KS (KS)	5,233	5,155
Topeka, KS	1,035,052	717,934

TABLE 2

FTA FY 1995 URBANIZED AREA FORMULA APPORTIONMENTS (FORMERLY SECTION 9)

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	TOTAL APPORTIONMENT	OPERATING ASSISTANCE LIMITATIONS
KENTUCKY:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 1,319,635	$ 847,422
Clarksville, TN-KY (KY)	161,022	97,406
Evansville, IN-KY (KY)	197,732	60,074
Huntington-Ashland, WV-KY-OH (KY)	394,310	291,261
Owensboro, KY	566,571	398,681
LOUISIANA:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 3,908,205	$ 2,491,896
Alexandria, LA	570,318	434,854
Houma, LA	401,160	256,311
Lafayette, LA	986,791	571,985
Lake Charles, LA	792,670	551,985
Monroe, LA	753,709	524,769
Slidell, LA	403,557	151,992
MAINE:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 1,700,920	$ 1,077,952
Bangor, ME	349,510	203,678
Lewiston-Auburn, ME	406,125	287,510
Portland, ME	868,392	546,197
Portsmouth-Dover-Rochester, NH-ME (ME)	76,893	40,567
MARYLAND:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 1,891,508	$ 1,002,018
Annapolis, MD	616,068	304,846
Cumberland, MD-WV (MD)	327,657	240.410
Frederick, MD	444,523	167,422
Hagerstown, MD-PA-WV (MD)	503,260	289,340
MASSACHUSETTS:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 7,491,263	$ 5,347,972
Brockton, MA	1,368,431	1,288,942
Fall River, MA-RI (MA)	1,334,668	838,629
Fitchburg-Leominster, MA	540,863	354,109
Hyannis, MA	386,233	145,447
Lowell, MA-NH (MA)	1,693,905	1,329,565
New Bedford, MA	1,467,854	927,993
Pittsfield, MA	349,631	282,650
Taunton, MA	349,678	180,637

TABLE 2

FTA FY 1995 URBANIZED AREA FORMULA APPORTIONMENTS (FORMERLY SECTION 9)

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	TOTAL APPORTIONMENT	OPERATING ASSISTANCE LIMITATIONS
MICHIGAN:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 6,392,733	$ 4,378,351
Battle Creek, MI	533,913	418,426
Bay City, MI	596,468	458,528
Benton Harbor, MI	431,440	281,632
Holland, MI	484,213	182,372
Jackson, MI	596,139	436,828
Kalamazoo, MI	1,287,336	818,808
Muskegon, MI	785,221	552,930
Port Huron, MI	516,771	291,009
Saginaw, MI	1,161,232	937,818
MINNESOTA:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 2,278,183	$ 1,454,574
Duluth, MN-WI (MN)	554,377	477,919
Fargo-Moorhead, ND-MN (MN)	320,548	203,072
Grand Forks, ND-MN (MN)	70,253	50,044
La Crosse, WI-MN (MN)	34,414	16,606
Rochester, MN	625,286	382,911
St. Cloud, MN	673,305	324,022
MISSISSIPPI:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 1,955,860	$ 1,208,906
Biloxi-Gulfport, MS	1,210,930	736,225
Hattiesburg, MS	377,411	221,414
Pascagoula, MS	367,519	251,267
MISSOURI:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 2,695,209	$ 1,606,985
Columbia, MO	532,103	296,631
Joplin, MO	373,683	211,476
Springfield, MO	1,255,292	683,286
St. Joseph, MO-KS (MO)	534,131	415,592
MONTANA:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 1,794,208	$ 1,154,428
Billings, MT	691,953	443,806
Great Falls, MT	645,262	432,589
Missoula, MT	456,993	278,033

TABLE 2

FTA FY 1995 URBANIZED AREA FORMULA APPORTIONMENTS (FORMERLY SECTION 9)

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	TOTAL APPORTIONMENT	OPERATING ASSISTANCE LIMITATIONS
NEBRASKA:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 1,994,613	$ 1,044,810
Lincoln, NE	1,908,329	996,153
Sioux City, IA-NE-SD (NE)	86,284	48,657
NEVADA:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 0	$ 0
NEW HAMPSHIRE:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 2,413,171	$ 1,241,186
Lowell, MA-NH (NH)	4,958	1,515
Manchester, NH	1,015,414	567,372
Nashua, NH	802,993	361,024
Portsmouth-Dover-Rochester, NH-ME (NH)	589,806	311,275
NEW JERSEY:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 1,835,237	$ 1,549,537
Atlantic City, NJ	1,322,787	1,217,878
Vineland-Millville, NJ	512,450	331,659
NEW MEXICO:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 999,386	$ 461,828
Las Cruces, NM	555,163	246,772
Santa Fe, NM	444,223	215,056
NEW YORK:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 5,544,922	$ 3,849,863
Binghamton, NY	1,391,799	1,005,285
Danbury, CT-NY (NY)	18,864	5,633
Elmira, NY	571,517	437,965
Glens Falls, NY	393,022	218,014
Ithaca, NY	396,669	149,401
Newburgh, NY	515,086	271,297
Poughkeepsie, NY	1,082,008	840,799
Stamford, CT-NY (NY)	128	145
Utica-Rome, NY	1,175,829	921,324

TABLE 2

FTA FY 1995 URBANIZED AREA FORMULA APPORTIONMENTS (FORMERLY SECTION 9)

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	TOTAL APPORTIONMENT	OPERATING ASSISTANCE LIMITATIONS
NORTH CAROLINA:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 9,001,637	$ 5,076,514
Asheville, NC	694,811	418,319
Burlington, NC	504,027	318,083
Gastonia, NC	738,015	484,043
Goldsboro, NC	383,269	217,324
Greensboro, NC	1,587,330	915,373
Greenville, NC	441,294	166,209
Hickory, NC	420,871	231,602
High Point, NC	709,746	476,370
Jacksonville, NC	685,233	273,350
Kannapolis, NC	494,678	276,490
Rocky Mount, NC	395,437	148,936
Wilmington, NC	646,789	346,552
Winston-Salem, NC	1,300,137	803,863
NORTH DAKOTA:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 1,749,010	$ 926,588
Bismarck, ND	504,340	289,737
Fargo-Moorhead, ND-MN (ND)	729,406	380,535
Grand Forks, ND-MN (ND)	515,264	256,316
OHIO:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 4,808,958	$ 3,273,279
Hamilton, OH	993,970	551,774
Huntington-Ashland, WV-KY-OH (OH)	253,118	164,317
Lima, OH	543,236	395,679
Mansfield, OH	524,472	396,140
Middletown, OH	683,406	381,448
Newark, OH	416,392	229,198
Parkersburg, WV-OH (OH)	61,658	41,550
Sharon, PA-OH (OH)	40,659	27,994
Springfield, OH	790,520	604,837
Steubenville-Weirton, OH-WV-PA (OH)	284,399	258,877
Wheeling, WV-OH (OH)	217,128	221,465
OKLAHOMA:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 748,489	$ 515,221
Fort Smith, AR-OK (OK)	13,131	8,873
Lawton, OK	735,358	506,348

TABLE 2

FTA FY 1995 URBANIZED AREA FORMULA APPORTIONMENTS (FORMERLY SECTION 9)

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	TOTAL APPORTIONMENT	OPERATING ASSISTANCE LIMITATIONS
OREGON:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 3,903,359	$ 1,900,142
Eugene-Springfield, OR	1,837,397	967,527
Longview, WA-OR (OR)	12,220	7,159
Medford, OR	567,839	259,408
Salem, OR	1,485,903	666,048
PENNSYLVANIA:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 10,204,067	$ 6,839,624
Altoona, PA	697,080	544,068
Erie, PA	1,793,225	1,239,002
Hagerstown, MD-PA-WV (PA)	6,143	5,140
Johnstown, PA	642,816	582,942
Lancaster, PA	1,621,303	810,238
Monessen, PA	441,219	282,108
Pottstown, PA	418,694	157,696
Reading, PA	1,892,593	1,478,004
Sharon, PA-OH (PA)	293,124	245,780
State College, PA	610,066	334,635
Steubenville-Weirton, OH-WV-PA (PA)	2,131	909
Williamsport, PA	511,398	370,416
York, PA	1,274,275	788,686
PUERTO RICO:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 9,426,414	$ 4,416,173
Aguadilla, PR	824,682	327,783
Arecibo, PR	770,563	379,595
Caguas, PR	2,018,000	821,020
Cayey, PR	596,648	224,750
Humacao, PR	516,386	194,502
Mayaguez, PR	1,109,456	605,038
Ponce, PR	2,468,876	1,488,189
Vega Baja-Manati, PR	1,121,803	455,296
RHODE ISLAND:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 600,017	$ 328,384
Fall River, MA-RI (RI)	137,550	72,239
Newport, RI	462,467	256,145

TABLE 2

FTA FY 1995 URBANIZED AREA FORMULA APPORTIONMENTS (FORMERLY SECTION 9)

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	TOTAL APPORTIONMENT	OPERATING ASSISTANCE LIMITATIONS
SOUTH CAROLINA:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 2,540,992	$ 1,350,866
Anderson, SC	341,743	211,727
Florence, SC	351,509	222,033
Myrtle Beach, SC	368,623	138,822
Rock Hill, SC	391,399	198,935
Spartanburg, SC	682,295	426,659
Sumter, SC	405,423	152,690
SOUTH DAKOTA:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 1,261,680	$ 697,794
Rapid City, SD	401,825	237,073
Sioux City, IA-NE-SD (SD)	11,266	5,625
Sioux Falls, SD	848,589	455,096
TENNESSEE:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 1,952,670	$ 1,183,821
Bristol, TN-VA (TN)	182,516	120,321
Clarksville, TN-KY (TN)	445,005	223,019
Jackson, TN	336,827	198,215
Johnson City, TN	513,433	305,051
Kingsport, TN-VA (TN)	474,889	337,215
TEXAS:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 18,079,975	$ 10,249,420
Abilene, TX	641,446	429,565
Amarillo, TX	1,189,744	725,550
Beaumont, TX	818,283	582,583
Brownsville, TX	1,189,354	457,884
Bryan-College Station, TX	796,672	331,744
Denton, TX	430,339	162,066
Galveston, TX	456,493	351,408
Harlingen, TX	584,533	284,987
Killeen, TX	1,118,052	430,155
Laredo, TX	1,412,066	586,772
Lewisville, TX	496,789	187,088
Longview, TX	488,778	274,520
Lubbock, TX	1,392,018	846,327
Midland, TX	609,911	344,737
Odessa, TX	676,612	544,108
Port Arthur, TX	738,082	557,628
San Angelo, TX	634,234	358,927

TABLE 2

FTA FY 1995 URBANIZED AREA FORMULA APPORTIONMENTS (FORMERLY SECTION 9)

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	TOTAL APPORTIONMENT	OPERATING ASSISTANCE LIMITATIONS
TEXAS:		
Sherman-Denison, TX	317,473	263,116
Temple, TX	360,421	196,735
Texarkana, TX-AR (TX)	290,831	190,478
Texas City, TX	773,083	411,763
Tyler, TX	604,532	363,082
Victoria, TX	419,075	269,813
Waco, TX	912,965	581,604
Wichita Falls, TX	728,189	516,780
UTAH:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 361,362	$ 136,097
Logan, UT	361,362	136,097
VERMONT:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 634,083	$ 325,847
Burlington, VT	634,083	325,847
VIRGINIA:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 4,209,011	$ 2,680,613
Bristol, TN-VA (VA)	129,938	72,796
Charlottesville, VA	605,215	344,275
Danville, VA	343,687	243,237
Fredericksburg, VA	403,499	151,966
Kingsport, TN-VA (VA)	24,532	20,812
Lynchburg, VA	575,768	387,255
Petersburg, VA	729,918	552,105
Roanoke, VA	1,396,454	908,167
WASHINGTON:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 3,977,592	$ 1,922,554
Bellingham, WA	468,639	237,389
Bremerton, WA	907,841	291,835
Longview, WA-OR (WA)	396,543	230,498
Olympia, WA	706,306	293,728
Richland-Kennewick-Pasco, WA	736,832	438,534
Yakima, WA	761,431	430,570

TABLE 2

FTA FY 1995 URBANIZED AREA FORMULA APPORTIONMENTS (FORMERLY SECTION 9)

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	TOTAL APPORTIONMENT	OPERATING ASSISTANCE LIMITATIONS
WEST VIRGINIA:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 3,056,983	$ 2,415,208
Charleston, WV	1,229,773	891,149
Cumberland, MD-WV (WV)	14,708	13,977
Hagerstown, MD-PA-WV (WV)	3,715	3,257
Huntington-Ashland, WV-KY-OH (WV)	690,443	579,953
Parkersburg, WV-OH (WV)	444,044	367,131
Steubenville-Weirton, OH-WV-PA (WV)	191,047	171,289
Wheeling, WV-OH (WV)	483,253	388,452
WISCONSIN:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 8,368,621	$ 5,246,785
Appleton-Neenah, WI	1,532,445	874,279
Beloit, WI-IL (WI)	328,481	207,504
Duluth, MN-WI (WI)	143,883	126,276
Eau Claire, WI	600,237	317,180
Green Bay, WI	1,163,897	674,972
Janesville, WI	441,741	259,105
Kenosha, WI	804,324	644,586
La Crosse, WI-MN (WI)	638,540	368,195
Oshkosh, WI	557,267	376,750
Racine, WI	1,242,282	829,155
Round Lake Beach-McHenry, IL-WI (WI)	466	132
Sheboygan, WI	525,045	318,363
Wausau, WI	390,013	250,288
WYOMING:		
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 876,111	$ 614,932
Casper, WY	401,894	329,865
Cheyenne, WY	474,217	285,067
TOTAL	$ 221,080,838	$123,933,07[illegible]

	TOTAL APPORTIONMENT	OPERATING ASSISTANCE LIMITATIONS
OVER 1,000,000 IN POPULATION	1,691,169,576	457,844,570
200,000-1,000,000 IN POPULATION	384,602,579	128,222,360
50,000-200,000 IN POPULATION	221,080,838	123,933,070
NATIONAL TOTALS	$ 2,296,852,993	$710,000,000

TABLE 3

FTA FISCAL YEAR 1995 NONURBANIZED AREA FORMULA APPORTIONMENTS

(FORMERLY SECTION 18) AND

RURAL TRANSIT ASSISTANCE PROGRAM (RTAP) ALLOCATIONS

STATE	SECTION 18 APPORTIONMENT	RTAP ALLOCATION	STATE	SECTION 18 APPORTIONMENT	RTAP ALLOCATION
ALABAMA	3,171,063	98,311	NEBRASKA	1,283,212	69,550
ALASKA	472,874	57,204	NEVADA	418,949	56,383
AMERICAN SAMOA	67,399	11,027	NEW HAMPSHIRE	1,109,268	66,900
ARIZONA	1,454,287	72,156	NEW JERSEY	1,586,018	74,163
ARKANSAS	2,535,133	88,623	NEW MEXICO	1,246,850	68,996
CALIFORNIA	6,187,434	144,266	NEW YORK	5,582,974	135,057
COLORADO	1,320,770	70,122	NORTH CAROLINA	5,930,767	140,356
CONNECTICUT	1,198,063	68,253	NORTH DAKOTA	628,941	59,582
DELAWARE	298,888	54,554	NORTHERN MARIANAS	62,460	10,952
FLORIDA	3,977,556	110,598	OHIO	6,037,933	141,988
GEORGIA	4,636,432	120,636	OKLAHOMA	2,548,105	88,821
GUAM	191,870	12,923	OREGON	2,049,459	81,224
HAWAII	520,369	57,928	PENNSYLVANIA	6,735,377	152,614
IDAHO	1,049,829	65,994	PUERTO RICO	2,012,743	80,664
ILLINOIS	4,219,898	114,290	RHODE ISLAND	257,836	53,928
INDIANA	4,108,946	112,600	SOUTH CAROLINA	2,968,379	95,223
IOWA	2,642,915	90,265	SOUTH DAKOTA	766,630	61,680
KANSAS	2,102,355	82,030	TENNESSEE	3,831,837	108,378
KENTUCKY	3,470,529	102,874	TEXAS	8,090,072	173,252
LOUISIANA	2,870,379	93,730	UTAH	581,148	58,854
MAINE	1,385,070	71,102	VERMONT	685,434	60,443
MARYLAND	1,729,193	76,344	VIRGIN ISLANDS	146,705	12,235
MASSACHUSETTS	1,853,170	78,233	VIRGINIA	3,397,295	101,758
MICHIGAN	5,018,699	126,460	WASHINGTON	2,380,442	86,266
MINNESOTA	2,887,972	93,998	WEST VIRGINIA	2,024,062	80,837
MISSISSIPPI	2,818,286	92,937	WISCONSIN	3,497,341	103,282
MISSOURI	3,363,743	101,247	WYOMING	489,143	57,452
MONTANA	850,444	62,957			
TOTAL				$ 132,752,946	$ 4,612,500

TABLE 4

FTA FISCAL YEAR 1995 ELDERLY AND PERSONS WITH DISABILITIES APPORTIONMENTS
(FORMERLY SECTION 16)

AMOUNTS APPORTIONED TO STATES

STATE	APPORTIONMENT	STATE	APPORTIONMENT
ALABAMA	$1,024,992	NEBRASKA	465,997
ALASKA	177,898	NEVADA	351,713
AMERICAN SAMOA	52,083	NEW HAMPSHIRE	333,353
ARIZONA	906,038	NEW JERSEY	1,699,032
ARKANSAS	722,086	NEW MEXICO	412,202
CALIFORNIA	5,466,199	NEW YORK	3,911,106
COLORADO	707,167	NORTH CAROLINA	1,502,241
CONNECTICUT	807,471	NORTH DAKOTA	262,527
DELAWARE	258,532	NORTHERN MARIANAS	51,902
DISTRICT OF COLUMBIA	256,760	OHIO	2,499,095
FLORIDA	3,694,965	OKLAHOMA	851,097
GEORGIA	1,323,280	OREGON	792,641
GUAM	131,927	PENNSYLVANIA	2,992,388
HAWAII	323,532	PUERTO RICO	752,937
IDAHO	330,633	RHODE ISLAND	365,741
ILLINOIS	2,395,469	SOUTH CAROLINA	823,336
INDIANA	1,266,164	SOUTH DAKOTA	281,928
IOWA	774,796	TENNESSEE	1,206,716
KANSAS	652,722	TEXAS	3,089,856
KENTUCKY	983,131	UTAH	385,465
LOUISIANA	986,248	VERMONT	236,466
MAINE	408,482	VIRGIN ISLANDS	133,796
MARYLAND	990,819	VIRGINIA	1,254,553
MASSACHUSETTS	1,418,479	WASHINGTON	1,127,177
MICHIGAN	2,052,334	WEST VIRGINIA	606,919
MINNESOTA	1,004,512	WISCONSIN	1,150,377
MISSISSIPPI	702,078	WYOMING	204,077
MISSOURI	1,283,753		
MONTANA	304,969	TOTAL	$59,152,156

TABLE 5

FTA FISCAL YEAR 1995 INTERSTATE SUBSTITUTE TRANSIT APPORTIONMENTS AMOUNTS APPORTIONED TO WITHDRAWAL AREAS

WITHDRAWAL AREA	APPORTIONMENT
CA Sacramento	$39,763
CA San Francisco	1,169,100
CT Killingly	141,538
CT Hartford	422,491
DC District of Columbia	109,430
IL Chicago	879,645
IA Waterloo	63,509
MA Boston	532,632
MD Baltimore	9,156,196
NJ New York	47,752
NY Albany	16,416
NY New York City	20,925,547
OH Cleveland	1,432,899
OR Oregon	1,661,718
RI Rhode Island	1,262,470
TN Memphis	476,309
Subtotal	**$38,337,415**
WS Milwaukee Earmark	9,500,000
TOTAL	**$47,837,415**

TABLE 6
FTA FISCAL YEAR 1995 FIXED GUIDEWAY MODERNIZATION APPORTIONMENTS

AREA	AMOUNT
AZ Phoenix	$1,233,329
CA Los Angeles	6,290,101
CA Sacramento	1,013,539
CA San Diego	2,225,093
CA San Francisco	47,364,497
CA San Jose	4,136,428
CO Denver	390,200
CT Hartford	465,409
CT Southwestern Connecticut	31,305,371
DE Wilmington	342,574
DC Washington	17,216,919
FL Miami	3,292,333
GA Atlanta	6,306,623
HI Honolulu	277,465
IL Chicago/Northwestern Indiana	100,894,686
LA New Orleans	2,082,485
MD Baltimore	2,484,896
MD Baltimore Commuter Rail	12,467,364
MA Boston	50,407,749
MA Lawrence-Haverhill	531,231
MI Detroit	195,598
MN Minneapolis	1,175,832
MO Kansas City	22,387
MO St. Louis	165,539
NJ Northeastern New Jersey	63,789,567
NJ Trenton	581,417
NY Buffalo	452,266
NY New York	251,026,652
OH Cleveland	10,537,228
OH Dayton	1,745,966
PA Philadelphia/Southern New Jersey	72,374,616
PA Pittsburgh	15,027,265
PR San Juan	1,079,417
OR Portland	894,947
RI Providence	1,075,304
TN Chattanooga	21,476
TX Dallas	327,124
TX Houston	1,720,598
VA Norfolk	423,872
WA Seattle	5,768,433
WA Tacoma	211,858
WI Madison	216,844
TOTAL	**$719,562,500**

TABLE 7
FTA FISCAL YEAR 1995 NEW START ALLOCATIONS

PROJECT LOCATION AND DESCRIPTION	FY 1995 ALLOCATION	PRIOR YEAR UNOBLIGATED ALLOCATION	TOTAL ALLOCATION
CA Los Angeles Metrorail MOS-2and 3	$163,762,500	$202,770,950	$366,533,450
CA Los Angeles-San Diego Commuter Rail	0	10,000,000	10,000,000
CA Orange County Transit System	4,962,500	15,383,750	20,346,250
CA San Diego Mid Coast Extension	0	3,983,250	3,983,250
CA San Francisco BART Extension/Tasman Corridor	19,998,875	0	19,998,875
CA San Francisco Airport BART/Tasman LRT	0	53,506,587	53,506,587
CA San Jose to Gilroy Commuter Rail	0	8,000,000	8,000,000
CA Vallejo North Bay Ferry	0	8,000,000	8,000,000
FL Miami Metromover Extension	0	17,581,595	17,581,595
FL Miami Metrorail North Corridor Extension	992,500	0	992,500
Fl Orlando OSCAR Streetcar	0	4,734,900	4,734,900
FL Tampa/Lakeland Commuter Rail	496,250	0	496,250
FL Tri-County Commuter Rail	9,925,000	0	9,925,000
GA Atlanta MARTA North Line Extension	0	11,045,616	11,045,616
IL Chicago Central Area Connector	24,812,500	64,197,552	89,010,052
IL Chicago Wisconsin Central Commuter (Metra)	2,481,250	7,940,000	10,421,250
LA New Orleans Canal Street Corridor	9,925,000	1,573,000	11,498,000
ME Portland-Boston Commuter Rail	3,573,000	34,737,500	38,310,500
MA Boston Metropolitan "Urban Ring"	1,091,750	0	1,091,750
MA New Bedford and Fall River Commuter Rail	744,375	0	744,375
MA South Boston Piers Transitway	23,820,000	19,925,000	43,745,000
MD MARC Commuter Rail	13,895,000	6,772,750	20,667,750
MD Maryland Central Corridor LRT	2,977,500	24,812,500	27,790,000
MI Detroit LRT Project	0	10,000,000	10,000,000
MN Twin Cities Central Corridor	4,962,500	2,779,000	7,741,500
MO Kansas City LRT Project	0	931,520	931,520
MO St. Louis Metro Link LRT Project	12,004,288	8,035,000	20,039,288
NJ Burlington to Gloucester Line	1,488,750	0	1,488,750
NJ Hawthorne-Warwick Commuter Rail	0	45,319,000	45,319,000
NJ Lakewood-Matawan Freehold Commuter Rail	0	5,955,000	5,955,000
NJ South Jersey Regional Rail	0	496,250	496,250
NJ Urban Core Project	106,197,500	71,491,250	177,688,750
NJ West Shore Line	3,970,000	0	3,970,000
NY Queens Connection Project	54,587,500	0	54,587,500
NY Staten Island-Midtown Ferry	0	1,000,000	1,000,000
NY Whitehall Ferry Terminal	2,481,250	0	2,481,250
OH Akron Commuter Rail	0	992,500	992,500
OH Cincinnati Northeast/Northern Kentucky Rail	1,191,000	0	1,191,000
OH Cleveland Dual Hub Corridor	0	8,741,780	8,741,780
OR Portland Westside LRT Project	97,265,000	0	97,265,000
PA Cross-County Metro Major Investment Study	0	1,204,750	1,204,750
PA Pittsburgh Busway Project	9,925,000	41,424,750	51,349,750
PR San Juan Tren Urbano	4,962,500	0	4,962,500
TN Memphis Regional Rail	0	496,250	496,250
TX Dallas-Fort Worth RAILTRAN Project	2,977,500	0	2,977,500
TX DART North Central Light Rail Extension	2,481,250	0	2,481,250
TX Houston Regional Bus Program	29,775,000	39,883,475	69,658,475
TX South Oak Cliff LRT Project	16,798,062	43,701,251	60,499,313
UT Salt Lake City Light Rail	4,962,500	4,931,030	9,893,530
WA Seattle-Renton-Tacoma Commuter Rail	2,332,375	18,425,250	20,757,625
WI Milwaukee East-West Corridor	0	3,000,000	3,000,000
TOTAL	$641,819,975	$803,773,006	$1,445,592,981

TABLE 8

FTA FISCAL YEAR 1995 BUS ALLOCATIONS

ISTEA ALLOCATIONS		
MI State		$10,000,000
PA Altoona (Bus Testing)		2,000,000
ADMINISTRATIVE COMMITMENT		
PA BARTA		1,700,000
FY 1995 CONFERENCE EARMARKS	**PURPOSE**	**ALLOCATION**
AK Marine Transit System	Ferry system	2,000,000
AR Little Rock	Transit transfer facility	1,000,000
AZ Phoenix	Alternative fuel buses	6,500,000
AZ Tucson	Alternatively fueled buses	1,890,000
AZ Tucson	Paratransit O&M facility	1,890,000
CA Long Beach	Buses	1,000,000
CA Los Angeles	Gateway intermodal center	7,000,000
CA San Francisco	Ferry building facility	1,000,000
CA San Francisco Bay Area	Buses	7,000,000
CA Santa Barbara	Buses	1,000,000
CA Santa Cruz	Bus facility	1,000,000
CA Yolo County	Bus facility	1,500,000
CO Eagle County	Buses	1,000,000
CT Norwich	Bus transfer/parking facility	2,000,000
DE State	Bus replacement	6,000,000
FL Miami	Buses	2,000,000
FL Orlando	OSCAR	6,500,000
FL Orlando Lynx	Buses	500,000
FL Palm Beach County	Buses & bus facility	5,000,000
GA Atlanta	Buses	4,000,000
HI Kauai	Iniki Express operations	1,500,000
IL State	Buses and bus facilities	17,000,000
IA State	Buses and bus facilities	7,000,000
IA Cedar Rapids	Electric hybrid buses	3,000,000
KS Johnson County	Wheelchair lift vans and buses	1,030,000
KS Wichita	Transit maintenance facility	2,600,000
LA New Orleans	Buses	8,280,000
LA New Orleans	Union Passenger Terminal	2,000,000
MD State	Buses and bus facilities	9,700,000
MA Fitchburg	Intermodal Center	1,000,000
MA Greenfield-Montague	Buses	540,000
MA Worchester	Intermodal Center	3,000,000
MI Detroit	Passenger intermodal center	4,000,000
MI Flint	Ground transportation center	170,000
MI Lansing	Intermodal center	4,000,000
MI Southeast	SMART/DDOT merger	9,000,000
MN MTC Minneapolis	Buses	6,000,000
MO State	Buses and bus facilities	1,500,000

TABLE 8

FTA FISCAL YEAR 1995 BUS ALLOCATIONS

FY 1995 CONFERENCE EARMARKS	PURPOSE	ALLOCATION
MO Kansas City	Union Station facility	5,000,000
NV Las Vegas/Clark County	Buses and bus facility	6,000,000
NJ Atlantic City	Bus terminal	4,000,000
NJ Atlantic City	Rural buses	150,000
NJ Camden	Shuttle buses	150,000
NJ Cumberland County	Buses	480,000
NJ New Jersey Transit	Buses	13,000,000
NJ Vineland	Bus terminal	1,000,000
NM Albuquerque	Intermodal Center	3,750,000
NM Las Vegas	Intermodal Center	220,000
NM Santa Fe	Buses and center improvement	1,010,000
NY Albany	Buses	1,000,000
NY Bronx	Buses	1,000,000
NY Buffalo	Transit station	800,000
NY Long Island	Buses, paratransit, and equipment	7,300,000
NY Syracuse	Bus garage	700,000
NY Westchester County	Buses	1,500,000
NC State	Buses and vans	16,000,000
OH State	Buses and bus facilities	15,000,000
OH Central	Buses	3,000,000
OH Cleveland	Bus garage	1,500,000
OH Cleveland	Tower city intermodal hub	1,000,000
OR Corvallis	Buses	920,000
OR Salem	Bus facility	1,000,000
PA Beaver County	Intermodal garage	2,500,000
PA Philadelphia-Erie Avenue	Bus garage	500,000
PA Philadelphia-Midvale	Bus garage	7,500,000
PA Pittsburgh	Busway	10,000,000
PA Southeastern	Buses	6,000,000
SD Sioux Falls	Buses	1,200,000
TN State	Buses	4,000,000
TN Memphis, Shelby County	Central Station intermodal facility	8,700,000
TX El Paso	Alternatively fueled buses	7,500,000
TX El Paso	Transit terminal	1,500,000
UT State	Buses and bus facilities	4,000,000
VA Herndon-Reston	Park-n-ride	7,500,000
VA Northern Virginia-Dulles	Corridor express bus	950,000
VT Rutland	Intermodal facility	1,500,000
WA Clallam	Bus facility	1,600,000
WA Edmonds	Intermodal center	400,000
WA King County/Seattle	Buses	3,000,000
WA Pierce County	Tacoma Dome Station	3,000,000
WA Wenatchee	Intermodal facility	2,000,000
WI State	Buses	12,000,000
WI Milwaukee	Multi-modal transit platform	1,000,000
WV Tri-State Authority	Buses and vans	3,400,000
Unallocated		20,650,025
TOTAL		$350,680,025

TABLE 8
FTA FISCAL YEAR 1994 AND PRIOR YEAR UNOBLIGATED BUS EARMARKS

AREA	PRIOR YEAR EARMARKS
AR Eureka Springs	$63,600
AR Little Rock	2,100,000
CA Lake Tahoe	2,100,000
CA Los Angeles	20,203,694
CA Sacramento	9,580,067
CA San Francisco	5,137,000
CA Santa Barbara	3,000,000
FL Miami	2,920,000
GA Atlanta	1,301,729
HI Kauai	1,750,000
IL Statewide	7,359,000
IN State	2,409,783
IN South Bend	3,100,000
IA Des Moines	14,123,694
KS Topeka	8,000,000
MD State	739,998
MD Silver Spring	1,500,000
MI Southeast (SMART)	5,000,000
MO St. Louis	4,813,580
NV Las Vegas	4,500,000
NM Albuquerque	1,750,000
NM Rio Rancho	325,432
NJ Camden	800,000
NJ South Amboy	500,000
NC State	17,600,000
OH Lake County	2,000,000
OR Eugene	8,850,034
OR Salem	3,800,000
PA Altoona (Bus Testing)	2,000,000
PA Erie	4,067,898
PA Philadelphia	1,000,000
PA Pittsburgh (Robinson)	8,135,795
PA Williamsport	2,500,000
PR San Juan	2,500,003
TN State	8,000,000
TN Memphis	5,550,868
TX Barzos Valley	1,136,040
TX Corpus Christi	4,114,047
TX Dallas	19,635,796
TX Dallas	13,017,273
TX El Paso	5,000,000
UT Salt Lake City	3,000,000
VT Rutland	1,500,000
WA Seattle	4,700,000
WV Wheeling	7,998,764
WI Madison	2,493,000
WI Milwaukee	3,000,000
Fuel Cell Bus	3,000,000
TOTAL	**$237,677,095**

TABLE 9

FTA METROPOLITAN PLANNING PROGRAM (FORMERLY SECTION 8)
AND
STATE PLANNING AND RESEARCH PROGRAM
(FORMERLY SECTION 26(a)(2))

STATE	METROPOLITAN PLANNING PROGRAM APPORTIONMENT	STATE PLANNING AND RESEARCH PROGRAM APPORTIONMENT
Alabama	$362,711	$92,790
Alaska	166,050	42,375
Arizona	657,402	133,943
Arkansas	166,050	42,375
California	7,046,468	1,284,265
Colorado	539,244	119,914
Connecticut	482,335	123,842
Delaware	166,050	42,375
District/Col	223,332	42,375
Florida	2,248,985	513,261
Georgia	797,899	164,437
Hawaii	166,050	42,375
Idaho	166,050	42,375
Illinois	2,422,732	427,583
Indiana	588,418	135,793
Iowa	185,901	47,538
Kansas	214,460	51,369
Kentucky	257,613	64,392
Louisiana	445,598	112,360
Maine	166,050	42,375
Maryland	962,962	180,614
Massachusetts	1,173,772	238,555
Michigan	1,513,529	293,125
Minnesota	614,122	119,567
Mississippi	166,050	42,375
Missouri	695,407	140,334
Montana	166,050	42,375
Nebraska	166,050	42,375
Nevada	179,782	45,947
New Hampshire	166,050	42,375
New Jersey	2,053,912	334,330
New Mexico	166,050	42,375
New York	4,171,964	711,877
North Carolina	493,479	126,725
North Dakota	166,050	42,375
Ohio	1,429,481	335,713
Oklahoma	266,582	68,300
Oregon	300,247	71,614
Pennsylvania	1,909,473	363,476
Rhode Island	166,050	42,375
South Carolina	280,157	71,951
South Dakota	166,050	42,375
Tennessee	436,900	111,855
Texas	2,810,509	573,506
Utah	258,975	66,545
Vermont	166,050	42,375
Virginia	922,555	193,135
Washington	736,919	162,120
West Virginia	166,050	42,375
Wisconsin	557,792	124,297
Wyoming	166,050	42,375
Puerto Rico	448,033	107,177
	$41,512,500	$8,475,000

TABLE 10

Federal Transit Administration - Unit Values of Data
Fiscal Year 1995 Formula Grant Apportionments

Urbanized Area Formula Program (Formerly Section 9) - Bus Tier

Urbanized Areas Over 1,000,000:

Population	$2.43119795
Population x Density	$0.00062356
Bus Revenue Vehicle Mile	$0.35724062

Urbanized Areas Under 1,000,000:

Population	$2.19712981
Population x Density	$0.00096761
Bus Revenue Vehicle Mile	$0.46876853

Bus Incentive (PM denotes Passenger Mile):

Bus PM x Bus PM / Operating Cost =	$0.00375747

Urbanized Area Formula Program - Fixed Guideway Tier

Fixed Guideway Revenue Vehicle Mile	$0.48883877
Fixed Guideway Route Mile	$29,728
-Commuter Rail Floor	$4,971,837

Fixed Guideway Incentive:

Fixed Guideway PM x Fixed Guideway PM / Operating Cost =	$0.00053611
-Commuter Rail Incentive Floor	$228,285

Urbanized Area Formula Program - Areas Under 200,000

Population	$3.97409904
Population x Density	$0.00198591

Nonurbanized Area Formula Program (Formerly Section 18) - Areas Under 50,000

Population	$1.44098567

Capital Program (Formerly Section 3) - Fixed Guideway Modernization:

	Tier 3	Tier 4
Legislatively Specified Areas:		All Areas:
Revenue Vehicle Miie	$0.0306094	$0.1152587
Route Mile	$2,149.65	$6,986.76
Other Areas:		
Revenue Vehicle Mile	$0.20098752	
Route Mile	$6,417.31	

[FR Doc. 94–25160 Filed 10–11–94; 8:45 am]
BILLING CODE 4910–51–C

federal register

Wednesday
October 12, 1994

Part V

Department of Transportation

Federal Transit Administration

Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: The FTA is required by 49 U.S.C. 5307(d)(1) (formerly section 9(e)(2) of the Federal Transit Act, as amended) to obtain specific annual certifications for its formula assistance program for urbanized areas. Through this Notice, FTA has compiled the certifications and assurances in one document applicable to all of the FTA grant programs (see Appendix A.)

EFFECTIVE DATE: October 12, 1994.

FOR FURTHER INFORMATION CONTACT: Linda Watkins Sorkin, Office of the Chief Counsel, Federal Transit Administration, (202) 366–1936; or contact the appropriate Regional Office listed below.

Region 1: Boston

States served: Maine, New Hampshire, Vermont, Connecticut, Rhode Island, and Massachusetts
Tel. #617–494–2055

Region 2: New York

States served: New York, New Jersey, and Virgin Islands
Tel. #212–264–8162

Region 3: Philadelphia

States served: Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and District of Columbia
Tel. #215–656–6900

Region 4: Atlanta

States served: Kentucky, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, and Puerto Rico
Tel. #404–347–3948

Region 5: Chicago

States served: Minnesota, Wisconsin, Michigan, Illinois, Indiana, and Ohio
Tel. #312–353–2789;

Region 6: Dallas/Ft. Worth

States served: Arkansas, Louisiana, Oklahoma, Texas, and New Mexico
Tel. #817–860–9663

Region 7: Kansas City

States served: Missouri, Iowa, Kansas, and Nebraska
Tel. #816–523–0204

Region 8: Denver

States served: Colorado, Utah, Wyoming, Montana, North Dakota, South Dakota, Arizona*, and Nevada* (*these states are serviced by Region 8 but are geographically in Region 9)
Tel. #303–844–3242

Region 9: San Francisco

States served: California, Hawaii, Guam, American Samoa, and the Northern Mariana Islands
Tel. #415–744–3133

Region 10: Seattle

States served: Idaho, Oregon, Washington, and Alaska
Tel. #206–220–7954

SUPPLEMENTARY INFORMATION: To receive a Federal grant for mass transportation purposes from the Federal Transit Administration (FTA), an applicant must provide certain certifications and assurances required by Federal laws and regulations.

This Notice provides the applicant the text of certifications and assurances required for FTA grant programs which include Discretionary Grants; Research, Development and Demonstration Grants; Metropolitan Planning Grants; Formula Assistance Grants for Urbanized Areas; Grants for Training Programs; Formula Assistance Grants for Elderly Individuals and Individuals With Disabilities; Formula Assistance Grants for Nonurbanized Areas; Human Resource Grants; and Planning and Research Grants (formerly referenced as Sections 3, 6, 8, 9, 10, 11(a), 16, 18, 20, or 26 of the Federal Transit Act, as amended, now codified at 49 U.S.C. chapter 53.)

The certifications and assurances are set forth as Appendix A in this Notice, which thus serves as a comprehensive compilation of Federal certification and assurance requirements to date. This document will be re-published annually with any changes or additions specifically highlighted.

This Notice also provides the grant applicant with a single Signature Page, allowing the grant applicant and its attorney to certify compliance with all of the certifications and assurances pertinent to any and all grants for which the grant applicant wishes to apply in fiscal year 1995, (see Appendix B.)

In addition, FTA has introduced two new electronic programs for applicants. The On-Line Grantee Program is offered to applicants through the Grant Management Information System (GMIS). This is a computerized system designed to assist the grantee with the management of grant projects and budgets. All grant applicants are encouraged to participate in the On-Line Grantee Program, which includes the opportunity to electronically certify compliance for all certifications and assurances as shown in Appendix A. The Electronic Grant Making and Management Initiative (EGMM) is a new pilot program currently offered to selected grantees who will be able to actually apply for a grant electronically. Both programs are designed to aid FTA grant applicants by reducing time and paper. Applicants are asked to contact their Regional Office shown above for more information.

Background

In the past, applicants for FTA grants have submitted a variety of certifications and assurances with each application. Subsequently, an applicant was required to reaffirm compliance with the earlier certifications and assurances with a Statement of Continued Validity submitted with each application.

With the publication of this Notice, certifications and assurances for Federal mass transportation assistance grants will for the first time be contained in one document. This marks the beginning of an effort to assist grant applicants in reducing time and paper work in certifying compliance with various Federal laws and regulations. It coincides with the pilot program for the Electronic Grant Making and Management Initiative and the On-Line Grantee Program described above, which will further reduce the time required to process a grant application.

In order to keep an applicant well informed of its responsibility to meet the requirements of Federal transit laws, and aware of changes, deletions or additions to those requirements, this compilation will be published annually in conjunction with the publication of the agency's annual apportionment Notice, which allocates funds in accordance with the latest annual appropriations act.

This publication of certifications and assurances therefore supersedes the requirements of FTA Circular 9100.1B, dated July 1, 1988, "Standard Assurances for Urban Mass Transportation Administration Applications," which is being rescinded. Other affected Circulars will be revised accordingly. This publication also supersedes the requirement to submit the Statement of Continued Validity.

Procedures

Following this introductory material is a detailed compilation of Certifications and Assurances

(Appendix A), which is followed by a Signature Page (Appendix B.) The Signature Page is to be signed by the grant applicant and its attorney and sent to the appropriate FTA Regional office by: (1) The first-quarter application submission date published in the fiscal year apportionment announcement; or (2) with the first grant application of the 1995 fiscal year.

The Signature Page, when properly signed and submitted to the FTA, assures FTA the applicant intends to comply with the requirements for the specific program involved. Both sides of the Signature Page must be completed, first by marking where appropriate with an 'X' on the category selection side, and then signifying compliance by signing the reverse side (see Appendix B.)

In the event the grant applicant is a participant in the Electronic Grant Making and Management Initiative or the On-Line Grantee Program described above, submission of the Signature Page may be done electronically. The applicant is advised to consult with the appropriate Regional Office prior to submission.

References

49 U.S.C. 5301 *et seq.*, 42 U.S.C. 4151, Title VI and Title VII of the Civil Rights Act, FTA regulations under 49 CFR and FTA Circulars.

Issued: October 5, 1994.

Gordon J. Linton,

Administrator.

BILLING CODE 4910-57-P

FY1995 FTA ASSISTANCE PROGRAMS CERTIFICATIONS AND ASSURANCES

Each Applicant is requested to provide to the Federal Transit Administration (FTA) as many of the following certifications and assurances as possible to cover all applications for the various types of Federal assistance it intends to submit to FTA in Fiscal Year 1995. In the case of States that are making certifications and assurances on behalf of subrecipients of FTA assistance, States are expected to obtain sufficient documentation from those subrecipients in order to make the certifications and assurances. The fourteen categories are listed by Roman numerals I through XIV on the single submission Signature Page at the back of this document. Categories II through XIV may not be required of all grant applicants. The categories correspond to the following descriptions of circumstances mandating submission of specific certifications, assurances, or agreements:

I. CERTIFICATIONS AND ASSURANCES REQUIRED OF EACH APPLICANT

Each Applicant for Federal assistance awarded by FTA must make all certifications and assurances in this Category I. Accordingly, FTA may not award any Federal assistance until the Applicant provides assurance of compliance by selecting Category I on the Signature Page at the back of this document.

A. Authority of Applicant and Its Representative

The authorized representative of the Applicant and legal counsel who sign these certifications, assurances, and agreements attest that both the Applicant and its authorized representative have adequate authority under state and local law and the by-laws or internal rules of the Applicant organization to:
(1) Execute and file the application for Federal assistance on behalf of the Applicant,
(2) Execute and file the required certifications, assurances, and agreements on behalf of the Applicant binding the Applicant, and
(3) Execute grant and cooperative agreements with FTA on behalf of the Applicant.

B. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any grant or cooperative agreement awarded by FTA. The Applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant or cooperative agreement issued for its approved project with FTA. The Applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and affect the implementation of the project. The Applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise.

C. Debarment, Suspension, and Other Responsibility Matters -- Primary Covered Transactions

In accordance with the provisions of U.S. Department of Transportation (U.S. DOT) regulations on Governmentwide Debarment and Suspension (Nonprocurement) at 49 CFR 29.510, the Applicant (Primary Participant) certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction; violation of Federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses listed in paragraph (2) of this certification; and,

(4) Have not within a three year period preceding this application had one or more public transactions (Federal, state, or local) terminated for cause or default.

The Applicant (Primary Participant) certifies that if it becomes aware of any later information that contradicts the statements in paragraphs (1) - (4) above, it will promptly inform FTA. Should the Applicant (Primary Participant) be unable to certify to statements set forth in paragraphs (1) through (4) above, it shall so acknowledge with its signature and provide a written explanation to FTA.

D Drug-Free Workplace Certification

In accordance with U.S. DOT regulations on Drug-Free Workplace Requirements (Grants) at 49 CFR 29.630, the Applicant certifies that it will provide a drug-free workplace by:

(1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Applicant's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(2) Establishing an ongoing drug-free awareness program to inform employees about:

(a) The dangers of drug abuse in the workplace;

(b) The Applicant's policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, and employee assistance programs; and,

(d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Making it a requirement that each employee to be engaged in the performance of the grant or cooperative agreement be given a copy of the statement required by paragraph (1);

(4) Notifying the employee in the statement required by paragraph (1) that, as a condition of employment financed with Federal assistance provided by the grant or cooperative agreement, the employee will:

(a) Abide by the terms of the statement, and

(b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than 5 calendar days after such conviction;
(5) Notifying FTA in writing, within 10 calendar days after receiving notice under paragraph (4)(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every project officer or other designee on whose project activity the convicted employee was working. Notice shall include the identification number(s) of each affected grant or cooperative agreement.
(6) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (4)(b), with respect to any employee who is so convicted:

(a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state, or local health, law enforcement, or other appropriate agency;

(7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1) ,(2), (3), (4), (5), and (6).

The Applicant has or will provide to FTA a list identifying its headquarters location and each workplace it maintains in which FTA assisted activities are conducted.

E. Intergovernmental Review Assurance

The Applicant assures that each project application submitted to FTA for Federal assistance has been or will be submitted, as required by each State, for intergovernmental review to the appropriate state and local agencies. Specifically, the Applicant assures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. DOT regulations, "Intergovernmental Review of Department of Transportation Programs and Activities," 49 CFR part 17.

F. Nondiscrimination Assurance

In accordance with 49 U.S.C. 5332 and title VI of the Civil Rights Act of 1964, as amended, 2000d; U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act," at 49 CFR 21.7, the Applicant assures that it will comply with all requirements pursuant to 49 CFR part 21; FTA Circular 4702.1, "Title VI Program Guidelines for Federal Transit Administration Recipients"; and other applicable directives, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of mass transportation services and mass transportation-related benefits) for which the Applicant receives Federal financial assistance from the U.S. DOT or FTA.

The Applicant assures that the project or program will be conducted, property acquisitions will be undertaken, and project facilities will be operated in compliance with all requirements of 49 CFR part 21 and 49 U.S.C. 5332. The Applicant understands that this assurance extends to its entire facility and to facilities operated in connection with the project.

The Applicant assures that it will take appropriate action to ensure that any transferee receiving property financed with Federal assistance derived from U.S. DOT or FTA will comply with the provisions of 49 CFR part 21 and 49 U.S.C. 5332. As required by 49 CFR 21.7(a)(2), the Applicant will include in each third party contract, subgrant, or subagreement appropriate clauses to impose the requirements of 49 CFR part 21, and 49 U.S.C. 5332; and include appropriate provisions imposing those requirements in deeds and instruments recording the transfer of real property, structures, improvements.

The Applicant assures that it will promptly take the necessary actions to effectuate this assurance. In particular, the Applicant will notify the public that complaints pertaining to discrimination in the provision of mass transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit the requisite information pertaining to its compliance with these requirements. The Applicant assures that it will make such changes in its 49 U.S.C. 5332 and Title VI implementing procedures as U.S. DOT or FTA may request.

G. Assurance of Nondiscrimination on the Basis of Disability

In accordance with U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance," 49 CFR 27.9, which implement the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, the Applicant assures that, as a condition to the approval or extension of any Federal financial assistance from FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal financial assistance administered by the FTA or any entity within U.S. DOT.

Specifically, the Applicant assures it will implement any program or operate any facility so assisted in compliance with all applicable requirements imposed by U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990 (and any subsequent amendments thereto) at 49 CFR parts 27, 37, and 38, as well as all applicable regulations and directives issued in accordance thereto by other Federal departments or agencies.

II. PROCUREMENT CERTIFICATIONS AND ASSURANCES REQUIRED FOR EACH APPLICANT

The Applicant is required to make one of the following certifications or assurances about its procurement system that accurately reflects its circumstances. Indicate compliance with one of the choices in Category II by selecting A, B or C on the Signature Page.

The Applicant makes one of the following certifications or assurances:
A. The Applicant has self-certified its procurement system with FTA, and will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements set forth in FTA Circular 4220.1B, "Third Party Contracting Guidelines," and any revision thereto, including the requirement that it complete and submit every three years, the procurement system self-certification form set forth in Appendix B to that circular; or
B. The state assures that it will include in its contracts financed with FTA assistance all clauses required by Federal laws, executive orders, or regulations; and will ensure that each subgrantee and subrecipient will also include in their contracts financed with FTA assistance all clauses required by Federal laws, executive orders, or regulations; or
C. The Applicant has not self-certified its procurement system with FTA, but will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1B, "Third Party Contracting Guidelines," and any revision thereto; and it will also include in its third party contracts financed with FTA assistance all clauses required by that circular, as well as any other clauses that may be required by Federal laws, executive orders, or regulations.

III. LOBBYING CERTIFICATION REQUIRED FOR EACH APPLICATION EXCEEDING $100,000

An Applicant that submits, or intends to submit this fiscal year, an application for FTA assistance exceeding $100,000 must provide the following certification. FTA may not provide Federal assistance for an application exceeding $100,000 until the Applicant provides this certification shown by selecting Category III on the Signature Page.

In accordance with U.S. DOT regulations, "New Restrictions on Lobbying," at 49 CFR 20.110, for each application for Federal assistance exceeding $100,000, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that:
A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Applicant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal grant or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement.
B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the Applicant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
C. The Applicant shall require that the language of this certification be included in the award documents for each subaward at any tiers (including subcontracts, subgrants, sub-agreements, and contracts under grants and cooperative agreements financed with FTA assistance) and that each subrecipient shall certify and disclose accordingly.

The Applicant understands that: (1) This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into; (2) Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352; and (c) Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

IV. PUBLIC HEARING CERTIFICATION REQUIRED FOR EACH PROJECT (EXCEPT FORMULA ASSISTANCE PROJECTS FOR URBANIZED AREAS) THAT WILL SUBSTANTIALLY AFFECT A COMMUNITY OR ITS MASS TRANSPORTATION SERVICE

Apart from FTA's formula assistance program for urbanized areas, an Applicant for capital assistance or assistance that will substantially affect a community or its mass transportation service financed under another program must provide the following certification. FTA may not award such assistance until the Applicant provides this certification shown by selecting Category IV on the Signature Page.

In accordance with 49 U.S.C. 5323(b), the Applicant certifies that:
A. It has provided or before submitting the application will provide an adequate opportunity for a public hearing with adequate prior notice that includes a concise statement of the proposed project, which was published in a newspaper of general circulation in the geographic area to be served;
B. It has held or before submitting the application will hold that hearing and provide a transcript to FTA, unless no one with a significant economic, social, or environmental interest requests a hearing;
C. It has considered or before submitting the application will consider the economic, social, and environmental effects of the project; and
D. It has found that the project is consistent with official plans for developing the urban area.

V. CERTIFICATION OF PRE-AWARD AND POST-DELIVERY AUDIT OF ROLLING STOCK REQUIRED FOR EACH APPLICANT THAT PURCHASES ROLLING STOCK

An Applicant seeking FTA assistance to purchase rolling stock must make the following certification. FTA may not provide assistance for rolling stock acquisitions until the Applicant provides this certification shown by selecting Category V on the Signature Page.

In accordance with FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," at 49 CFR 663.7, the Applicant certifies that it will comply with the requirements of 49 CFR part 663, in the course of purchasing revenue service rolling stock. Among other things, the Applicant will conduct or cause to be conducted the prescribed pre-award and

post-delivery audits, and will maintain on file the certifications required by subparts B, C, and D of the regulations.

VI. BUS TESTING CERTIFICATION REQUIRED FOR THE ACQUISITION OF NEW BUSES

An Applicant seeking FTA assistance to acquire new buses must make the following certification. FTA may not provide assistance for the acquisition of new buses until the Applicant provides this certification shown by selecting Category VI on the Signature Page.

In accordance with FTA regulations, "Bus Testing," at 49 CFR 665.7, the Applicant certifies that before authorizing final acceptance of the first bus of any new bus model or any bus model with a major change in configuration or components (as described in 49 CFR part 665) acquired or leased with Federal assistance funds obligated by FTA, the following two conditions will have been met: (1) the model of the bus will have been tested at a bus testing facility approved by FTA; and (2) the Applicant will have received a copy of the test report prepared on the bus model.

VII. CHARTER BUS AGREEMENT

An Applicant seeking FTA assistance to acquire buses must agree as follows. FTA may not provide assistance for bus projects until the Applicant accepts this agreement by selecting Category VII on the Signature Page.

In accordance with 49 U.S.C. 5323(d) and FTA regulations, "Charter Service," at 49 CFR 604.7, the Applicant agrees that it and all its recipients will provide charter service that uses equipment or facilities acquired with Federal assistance authorized for 49 U.S.C. 5307, 5309, or 5311; or mass transportation projects awarded by FTA with Federal assistance derived from title 23 U.S.C., only to the extent that there are no private charter service operators willing and able to provide the charter service that it or its recipients desire to provide unless one or more of the exceptions in 49 CFR 604.9 applies.

The Applicant further agrees that it and its recipients will comply with the provisions of 49 CFR part 604 before they provide any charter service using equipment or facilities provided with Federal assistance authorized for the above statutes, that the requirements of 49 CFR part 604 will apply to any such charter service that is provided, and that the definitions in 49 CFR part 604 apply to this agreement. The Applicant understands that a violation of this agreement may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for mass transportation.

VIII. SCHOOL BUS AGREEMENT

An Applicant seeking FTA assistance to acquire mass transportation facilities and equipment must agree as follows. FTA may not provide assistance for mass transportation facilities until the Applicant accepts this Agreement by selecting Category VIII on the Signature Page.

In accordance with 49 U.S.C. 5323(f) and FTA regulations, "School Bus Operations," at 49 CFR 605.14, the Applicant agrees that it and all its recipients will comply with the requirements of 49 CFR part 605 before providing any school bus service using equipment or facilities acquired with Federal assistance awarded by FTA for mass transportation projects and authorized for 49 U.S.C. ch. 53 or for title 23 U.S.C., that the requirements of 49 CFR part 605 will apply to any such school bus service they provide; and that the definitions of 49 CFR part 605 apply to this school bus agreement. Specifically, the Applicant agrees that it and all its recipients will not engage in school bus operations in competition with private school bus operators, except to the extent permitted by 49 U.S.C. 5323(f), and implementing regulations. The Applicant understands that a violation of this agreement may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for mass transportation.

IX. CERTIFICATION REQUIRED FOR THE DIRECT AWARD OF FTA ASSISTANCE TO AN APPLICANT FOR ITS DEMAND RESPONSIVE SERVICE

To receive a direct grant to support its demand responsive service, the Applicant must provide the following certification. FTA may not make a direct grant of Federal assistance to an Applicant to support its demand responsive service until the Applicant provides this certification shown by selecting Category IX on the Signature Page.

In accordance with U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," at 49 CFR 37.77, the Applicant certifies that its demand responsive service offered to individuals with disabilities, including individuals who use wheelchairs, is equivalent to the level and quality of service offered to individuals without disabilities. Such service, when viewed in its entirety, is provided in the most integrated setting feasible and is equivalent with respect to: (1) response time; (2) fares; (3) geographic service area; (4) hours and days of service; (5) restrictions on trip purpose; (6) availability of information and reservation capability; and (7) constraints on capacity or service availability.

X. SUBSTANCE ABUSE CERTIFICATIONS REQUIRED BY JANUARY 1, 1995

An Applicant required by Federal regulations to provide the following substance abuse certifications, must do so by January 1, 1995. FTA may not provide Federal assistance

until an Applicant required to provide the following certifications by January 1, 1995 has done so by selecting Category X on the Signature Page.

A. Alcohol Testing Certification

In accordance with FTA regulations, "Prevention of Alcohol Misuse in Transit Operations," at 49 CFR 654.83, the Applicant certifies that it and its contractors, as required, has or will have, by January 1, 1995, established and implemented an alcohol misuse prevention program in compliance with the requirements of 49 CFR part 654; and to the extent that the Applicant has employees regulated by the Federal Railroad Administration (FRA), the Applicant also certifies that it has for those employees an alcohol misuse prevention program that complies with the requirements of FRA's regulations, "Control of Alcohol and Drug Use," 49 CFR part 219

B. Anti-Drug Program Certification

In accordance with FTA regulations, "Prevention of Prohibited Drug Use in Transit Operations," at 49 CFR 653.83, the Applicant certifies that it and its contractors, as required, has or will have, by January 1, 1995, established and implemented an anti-drug program, and has or will have conducted employee training in compliance with the requirements of 49 CFR part 653; and to the extent that the Applicant has employees regulated by FRA, the Applicant also certifies that it has for those employees an anti-drug program that complies with the requirements of FRA's regulations, "Control of Alcohol and Drug Use," 49 CFR part 219.

XI. ASSURANCES REQUIRED FOR GRANTS INVOLVING REAL PROPERTY OR CONSTRUCTION THEREON

The Applicant must provide the following assurances in connection with each application for Federal assistance to acquire (purchase or lease) real property. FTA may not award Federal assistance for a project involving real property until the Applicant provides these assurances shown by selecting Category XI on the Signature Page.

A. Relocation and Real Property Acquisition Assurance

In accordance with U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," at 49 CFR 24.4, and sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4630 and 4655, the Applicant assures that it has the requisite authority under applicable state and local law and will comply with the terms of that Act, 42 U.S.C. 4601 et seq. Specifically:

(1) The Applicant will comply with the requirements of U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR part 24;

(2) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;

(3) The Applicant will provide fair and reasonable relocation payments and assistance in accordance with 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations or associations displaced as a result of any project financed with FTA assistance;
(4) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations or associations in the manner provided in 49 CFR part 24 and FTA procedures;
(5) Within a reasonable time prior to displacement, the Applicant will make available comparable replacement dwellings to such displaced families and individuals in accordance with 42 U.S.C. 4625(c)(3);
(6) The Applicant will carry out the relocation process in such a manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin; and
(7) In acquiring real property, the Applicant will be guided to the greatest extent practicable under state law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;
(8) The Applicant will pay or reimburse property owners for necessary expenses as specified in 42 U.S.C. 4653 and 4654, with the understanding that FTA will participate in the Applicant's costs of providing payments and assistance for the project in accordance with 42 U.S.C. 4631; and
(9) The Applicant will execute such amendments to contracts and agreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein. The Applicant agrees to make this document part of and incorporate it by reference in any contract or agreement, or any supplements and amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions.

B. Flood Insurance Coverage

In accordance with section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4012a(a), the Applicant assures that, in the course of implementing each project, it will obtain appropriate insurance for any real estate acquired or construction undertaken within any special flood hazard area as identified by the Federal Insurance Administrator. The Applicant understands that such insurance is available in the participating area through the U.S. Federal Emergency Management Agency's National Flood Insurance Program.

C. Seismic Safety Assurance

In accordance with U.S. DOT regulations, "Seismic Safety," 49 CFR 41.117(d), the Applicant assures that before it accepts delivery of any building financed with Federal assistance provided by FTA, the Applicant will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR part 41.

XII. CERTIFICATIONS REQUIRED FOR THE FORMULA ASSISTANCE PROGRAM FOR URBANIZED AREAS

Each Applicant to FTA for formula assistance for urbanized areas authorized by 49 U.S.C. 5307 must provide the following certifications in connection with its application. FTA may not award formula assistance funds for urbanized areas to the Applicant until the Applicant provides these certifications. Note that in XII.A(10), the Applicant must indicate which certification it is making about transit security projects shown by selecting A(1) or A(2) on the Signature Page.

A. Certifications Required by Statute

In accordance with 49 U.S.C. 5307(d)(1)(A)-(J), the Applicant certifies that:
(1) It has or will have the legal, financial, and technical capacity to carry out the proposed program of projects;
(2) It has or will have satisfactory continuing control over the use of the equipment and facilities;
(3) It will adequately maintain the equipment and facilities;
(4) It will ensure that elderly and handicapped individuals, or an individual presenting a Medicare card issued to that individual under title II or title XVIII of the Social Security Act (42 U.S.C. 401 et seq. or 42 U.S.C. 1395 et seq.) will be charged during non-peak hours for transportation using or involving a facility or equipment of a project financed with Federal assistance authorized by 49 U.S.C. ch. 53 not more than 50 percent of the peak hour fare;
(5) In carrying out a procurement financed with Federal assistance authorized for 49 U.S.C. 5307, it will use competitive procurement (as defined or approved by the Secretary), will not use a procurement using exclusionary or discriminatory specifications, and will comply with applicable Buy America laws in carrying out a procurement;
(6) It has complied with the requirements of 49 U.S.C. 5307(c); - specifically, it has or before submitting its application it will: (a) make available to the public information on amounts available through 49 U.S.C. 5307 and the program of projects that the Applicant proposes to undertake with those funds; (b) develop, in consultation with interested parties, including private transportation providers, a proposed program of projects for activities to be financed; (c) publish a proposed program of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the Applicant; (d) provide an opportunity for a public hearing to obtain the views of citizens on the proposed program of projects; and (e) ensure that the proposed program of projects provides for the coordination of mass transportation services assisted under 49 U.S.C. 5336 with transportation services assisted from another United States Government source; (f) consider comments and views received, especially those of private transportation providers, in preparing the final program of projects; and (g) make the final program of projects available to the public;
(7) It has or will have available and will provide the required amount of funds in accordance with 49 U.S.C. 5307(e) and applicable FTA policy (specifying Federal and local shares of project costs);

(8) It will comply with: (a) 49 U.S.C. 5301(a) (requirements to develop transportation systems that efficiently maximize mobility and minimize fuel consumption and air pollution); (b) 49 U.S.C. 5301(d) (requirements for the transportation of elderly individuals and individuals with disabilities); (c) 49 U.S.C. 5303 - 5306 (planning requirements); and (d) 49 U.S.C. 5310(a) - (d) (programs for elderly individuals and individuals with disabilities);
(9) It has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of transportation; and
(10) It will treat its mass transportation security needs in one of the following ways, as indicated on the back of its Signature Page:
(a) It will expend for each fiscal year for mass transportation security projects, including increased lighting in or adjacent to a mass transportation system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, providing an emergency telephone line to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned mass transportation system, at least one percent of the amount it receives for this fiscal year apportioned by 49 U.S.C. 5336; or
(b) It has decided that it is not necessary to expend its funds apportioned by 49 U.S.C. 5336 this fiscal year for security projects.

B. Certification Required for Capital Leasing

In accordance with FTA regulations, "Capital Leases," 49 CFR at 639.15(b)(1) and 639.21, to the extent that the Applicant uses funds derived from 49 U.S.C. 5307 to acquire any capital asset by lease, the Applicant certifies that: (1) it will not use funds authorized for 49 U.S.C. 5307 to finance the cost of leasing any capital asset until it undertakes calculations demonstrating that it is more cost-effective to lease the capital asset than to purchase or construct similar assets; (2) it will complete these calculations before entering into the lease or before receiving a capital grant for the asset, whichever is later; and (3) it will not enter into a capital lease for which FTA can only provide incremental funding unless it has the financial capacity to meet its future obligations under the lease in the event Federal funds are not available for capital assistance in subsequent years.

XIII. CERTIFICATIONS AND ASSURANCES FOR THE FORMULA ASSISTANCE PROGRAM FOR ELDERLY INDIVIDUALS AND INDIVIDUALS WITH DISABILITIES

An Applicant that intends to administer, on behalf of the State, the formula assistance program for elderly individuals and individuals with disabilities must provide the following certifications. FTA may not award assistance for this program until the Applicant provides these certifications and assurances shown by selecting Category XIII on the Signature Page.

Based on its own knowledge and, as necessary, on information submitted by the subrecipient, the Applicant administering the formula assistance program for elderly individuals and

individuals with disabilities on behalf of the state certifies and assures that the following requirements and conditions will have been fulfilled before any Federal assistance authorized for 49 U.S.C. 5310 are provided to a specific subrecipient:

A. The state department or organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive and disburse 49 U.S.C. 5310 funds; and to implement and manage the project.

B. The state assures that each subrecipient either is recognized under state law as a private nonprofit organization with the legal capability to contract with the state to carry out the proposed project, or is a public body that has met the statutory requirements to receive funds authorized for 49 U.S.C. 5310.

C. The subrecipient's application for 49 U.S.C. 5310 assistance contains information from which the state concludes that the mass transportation service provided or offered to be provided by existing public or private mass transportation operators is unavailable, insufficient, or inappropriate to meet the special needs of elderly individuals and individuals with disabilities.

D. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

E. The subrecipient has, or will have by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment purchased with Federal assistance awarded for this project.

F. The state assures that its formula program for elderly individuals and individuals with disabilities is included in the Statewide Transportation Improvement Program in compliance with 23 U.S.C. 135; and all projects in urbanized areas recommended for approval are included in the annual element of the metropolitan Transportation Improvement Program in which the subrecipient is located.

G. The subrecipient has, to the maximum extent feasible, coordinated with other transportation providers and users, including social service agencies authorized to purchase mass transportation service.

H. The subrecipient is in compliance with all applicable civil rights requirements, and has signed the Nondiscrimination Assurance. (see Category I, G. "Certifications and Assurances Required of Each Applicant.")

I. The subrecipient will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprises in U.S. DOT programs.

J. The state will comply with all existing Federal requirements regarding transportation of elderly individuals and individuals with disabilities. The subrecipient has provided to the state an Assurance of Nondiscrimination on the Basis of Disability, as set forth in the Certifications and Assurances required of each Applicant for FTA assistance. (see Category I, F "Certifications and Assurances Required of Each Applicant.") If non-accessible vehicles are being purchased for use by a public entity in demand responsive service for the general public, the state will obtain from the subrecipient a "Certification of Equivalent Service," which states that the public entity's demand responsive service offered to individuals with disabilities, including individuals who use wheelchairs, is equivalent to the level and quality of service the public entity offers to individuals without disabilities. (see Category IX "Certifications Required for the Direct Award of FTA Assistance to an Applicant for its Demand Responsive Service.") This "Certification of Equivalent Service" must also state that the public entity's

demand responsive service, when viewed in its entirety, is provided in the most integrated setting feasible and is equivalent with respect to: (1) response time; (2) fares; (3) geographic service area; (4) hours and days of service; (5) restrictions on trip purpose; (6) availability of information and reservation capability; and (7) constraints on capacity or service availability.
K. The subrecipient has certified to the state that it will comply with applicable provisions of 49 CFR part 605 pertaining to school bus operations. (see Category VIII, "School Bus Agreement.")
L. Unless otherwise noted, each of the subrecipient's projects qualifies for the type of categorical exclusion that does not require further FTA environmental approvals, as described in the joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," at 23 CFR 771.117(c). In the case of any project not qualifying for a categorical exclusion described in 23 CFR 771.117(c), the state assures that financial assistance will not be provided for that project until FTA has made the required environmental finding. In addition, if a conformity finding for the project is required by the Environmental Protection Agency's clean air conformity regulations for FTA programs at 40 CFR parts 51 and 93, the state certifies that no financial assistance will be provided for that project until FTA makes the requisite conformity finding.
M. The subrecipient has submitted (or will submit) all certifications and assurances currently required, including, but not limited to: a nonprocurement suspension and debarment certification; a bus testing certification for new models; a pre-award and post-delivery audit certification; and, for an application exceeding $100,000, a lobbying certification.
N. The state will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.
O. The state recognizes FTA's authority to conduct audits to verify compliance with the foregoing requirements and stipulations.

XIV. CERTIFICATIONS AND ASSURANCES FOR THE FORMULA ASSISTANCE PROGRAM FOR NONURBANIZED AREAS

The Applicant that intends to administer, on behalf of the State, the formula assistance program for nonurbanized areas must submit the following certifications and assurances. FTA may not award formula assistance funds for nonurbanized areas to the Applicant until the Applicant provides these certifications and assurances. In addition to selecting these miscellaneous certifications and assurancesfor this Category, the Applicant must indicate which certification it is making about expenditures for intercity transportation projects by selecting (1) or (2) in Category XIV on the Signature Page.

Based on its own knowledge and, as necessary, on information submitted by the subrecipient, the Applicant administering the formula assistance program for nonurbanized areas on behalf of the state certifies and assures that the following requirements and conditions will have been fulfilled before any funds authorized for 49 U.S.C. 5311 are provided to a specific subrecipient:
A. The state department or organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive and disburse funds authorized for 49 U.S.C. 5311; and to implement and manage the project.

B. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.
C. The subrecipient has, or will have by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment purchased with Federal assistance authorized for this project.
D. The state assures that its formula assistance program for nonurbanized areas is included in the Statewide Transportation Improvement Program in compliance with 23 U.S.C. 135; and to the extent applicable, projects are included in a metropolitan Transportation Improvement Program.
E. The state has provided for a fair and equitable distribution of assistance authorized for 49 U.S.C. 5311 within the state, including Indian reservations within the state.
F. The subrecipient has, to the maximum extent feasible, coordinated with other transportation providers and users, including social service agencies authorized to purchase mass transportation service.
G. The subrecipient is in compliance with all applicable civil rights requirements, and has signed the Nondiscrimination Assurance. (see Category I, G, "Certifications and Assurances Required of Each Applicant.")
H. The subrecipient will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprise in U.S. DOT programs.
I. The state will comply with all existing Federal requirements regarding transportation of elderly individuals and individuals with disabilities. The subrecipient has provided to the state an Assurance of Nondiscrimination on the Basis of Disability, as set forth in the Certifications and Assurances required of each Applicant for FTA assistance in Category I of this document. If non-accessible vehicles are being purchased for use by a public entity in demand responsive service for the general public, the state will obtain from the subrecipient a "Certification of Equivalent Service," which states that the public entity's demand responsive service offered to individuals with disabilities, including individuals who use wheelchairs, is equivalent to the level and quality of service the public entity offers to individuals without disabilities. (see Category I, F , "Certifications and Assurances Required of Each Applicant.") This "Certification of Equivalent Service" must also state that the public entity's demand responsive service, when viewed in its entirety, is provided in the most integrated setting feasible and is equivalent with respect to: (1) response time; (2) fares; (3) geographic service area; (4) hours and days of service; (5) restrictions on trip purpose; (6) availability of information and reservation capability; and (7) constraints on capacity or service availability. (see Category IX, "Certifications Required for the Direct Award of FTA Assistance to an Applicant for its Demand Responsive Service.")
J. The subrecipient has complied with the labor protection provisions of 49 U.S.C. 5333(b), by one of the following actions: (1) signing the Special Warranty for the Nonurbanized Area Program, (2) agreeing to alternative comparable arrangements approved by the Department of Labor (DOL), or (3) obtaining a waiver from DOL; and the state has certified the subrecipient's compliance to DOL.
K. The subrecipient has certified to the state that it will comply with 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance, and will also comply with applicable provisions of 49 CFR part 605 pertaining to

school bus operations. (see Categories VII, "Charter Bus Agreement," and VIII, "School Bus Agreement.")

L. Unless otherwise noted, each of the subrecipient's projects qualifies for the type of categorical exclusion that does not require further FTA environmental approvals, as described in the joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," at 23 CFR 771.117(c). In the case of any project not qualifying for a categorical exclusion described in 23 CFR 771.117(c), the state assures that financial assistance will not be provided for that project until FTA has made the required environmental finding. In addition, if a conformity finding for the project is required by the Environmental Protection Agency's clean air conformity regulations for FTA programs at 40 CFR parts 51 and 93, the state certifies that no financial assistance will be provided for that project until FTA makes the requisite conformity finding.

M. The subrecipient has submitted (or will submit) all certifications and assurances currently required, including but not limited to: a nonprocurement suspension and debarment certification; a bus testing certification for new bus models; a pre-award and post-delivery audit certification; for an application exceeding $100,000, a lobbying certification; and if required by FTA, an anti-drug program certification and an alcohol testing certification.

N. The state will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

O. The state recognizes FTA's authority to conduct audits to verify compliance with the foregoing requirements and stipulations.

P. As required by 49 U.S.C. 5311(f), it will address intercity transportation needs in one of the following ways, as indicated on its Signature Page as XIV (1) or (2):

(1) It will expend not less than 15 percent of the funds authorized for 49 U.S.C. 5311(f) it receives during this fiscal year to carry out a program to develop and support intercity bus transportation.

(2) The chief executive officer of the state, or his or her duly authorized designee, has certified that the intercity bus service needs of the state are being adequately met.

##

FY 1995 CERTIFICATIONS AND ASSURANCES FOR FTA ASSISTANCE

Both sides of this Signature Page must be completed and signed where indicated.

The applicant may select Categories I, III, IV, V, VI, VII, VIII, IX, X, XI and XIII here.

Certification of All Categories: ___(except specify options for Categories II, XII and XIV below)

I. Certifications and Assurances Required of Each Applicant. ____

II. Procurement System (select one):
- A. Certification for Self-Certified System. ____
- B. Assurance Required for a State. ____
- C. Assurance for a System not Self-Certified. ____

III. Lobbying Certification. ____

IV. Public Hearing Certification for Major Projects with Substantial Impacts. ____

V. Certification for the Purchase of Rolling Stock. ____

VI. Bus Testing Certification. ____

VII. Charter Bus Agreement. ____

VIII. School Bus Agreement. ____

IX. Certification for Demand Responsive Service. ____

X. Substance Abuse Certifications Required by January 1, 1995. ____

XI. Assurances for Grants Involving Real Property or Construction Thereon ____

XII. Certifications for Formula Assistance for Urbanized Areas:
- A. Miscellaneous Certifications (select one):
  - (1) All certifications; 1% of the formula assistance funds for urbanized areas it receives this fiscal year will be used for transit security. ____
  - (2) All certifications; it is unnecessary to spend 1% of the formula assistance funds for urbanized areaseives this fiscal year for transit security. ____
- B. Capital Leasing Certification. ____

XIII. Certifications for Formula Assistance for Elderly Individuals and Individuals with Disabilities. ____

XIV. Certifications for Formula Assistance for Nonurbanized Areas (select one):
- (1) All required certifications; 15% of nonurbanized area funds it receives this fiscal year will be used for intercity bus projects. ____
- (2) All required certifications; the State's chief executive officer has certified that State intercity bus service needs are adequately met. ____

Appendix B, Page 2

CERTIFICATIONS AND ASSURANCES FOR FISCAL YEAR 1995

Name of Applicant:_____

Name of Authorized Representative:
Relationship of Authorized Representative:

BY ENDORSING THIS SIGNATURE PAGE, _____(name) declares that he or she is duly authorized by the Applicant to make the certifications and assurances on behalf of the Applicant and bind the Applicant to comply with them. Thus, when its authorized representative signs this document, the Applicant agrees to comply with all Federal statutes, regulations, executive orders, and administrative guidance required for any application it makes to the Federal Transit Administration (FTA) during Fiscal Year 1995.

FTA intends that the certifications and assurances the Applicant selects on the back of this form, as representative of the certifications and assurances in Appendix A, should apply, as required, to each project for which the Applicant seeks now, or may later, seek FTA assistance during fiscal year 1995.

The Applicant affirms the truthfulness and accuracy of the certifications and assurances it has made in the statements submitted herein with this document and any other submission made to FTA, and acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 et seq., as implemented by DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31 apply to any certification, assurance or submission made to FTA. The criminal fraud provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with the FTA formula assistance program for urbanized areas, and may apply to any other certification, assurance, or submission made in connection with any program administered by FTA.

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

Date: _____

_____
Authorized Representative of Applicant

(Except in the case of projects under FTA's university and research training program authorized by 49 U.S.C. 5312(b), the Applicant's legal counsel is required to affirm the legal capacity of the Applicant.)

AFFIRMATION OF APPLICANT'S ATTORNEY

for _____(Name of Applicant)

As the undersigned legal counsel for the above named Applicant hereby I affirm that the Applicant has authority unders state and local law to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the certifications and assurances have been legally made and constitute legal and binding obligations on the Applicant.

I further affirm that, to the best of my knowledge, there is no legislation or litigation pending or threatened that might adversely affect the validity of these certifications and assurances, or of the performance of the project. Furthermore, if I become aware of circumstances that change the accuracy of the foregoing statements, I will notify the Applicant and FTA.

Date: _____

_____
Applicant's Attorney



federal register

Wednesday
October 12, 1994

Part VI

Environmental Protection Agency

40 CFR Part 355
Superfund Program; Extremely Hazardous Substance List; Proposed Rule and Final Rule Correction

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 355

[FRL–5088–8]

RIN 2050–AD50

Extremely Hazardous Substance List

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rule; denial of petitions.

SUMMARY: EPA is responding to several citizens' petitions requesting the Agency to revise the list of "extremely hazardous substances" published under section 302 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). EPA is proposing a rule to delete from the extremely hazardous substance list phosphorous pentoxide, dithlycarbamazine citrate, fenitrothion and tellurium, and to revise the threshold planning quantity for isophorone diisocyanate from 100 to 1,000 pounds. EPA is denying petitions requesting deletion from the EHS list of paraquat and isophorone diisocyanate. The Agency is also denying a petition that requests revision of the threshold planning quantities for azinphos-methyl and fenamiphos.

DATES: Comments must be submitted on or before December 12, 1994.

ADDRESSES: Written comments should be submitted to: Superfund Docket Clerk, Attention: Docket Number 300PQ–R2, Room 2615 Mall, U.S. Environmental Protection Agency, Mail Stop 5201, 401 M Street, SW, Washington, DC 20460.

Copies of materials relevant to the rulemaking are contained in the Superfund Docket, Room 2615 Mall, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The technical background document relevant to the rulemaking is available in the docket. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: John Ferris, Chemical Emergency Preparedness and Prevention Office, OS–120, U.S. EPA, 401 M Street SW, Washington, DC 20460. The Emergency Planning and Community Right-to-Know Information Hotline can also be contacted for further information at 1–800–535–0202, in Washington, DC and Alaska at 1–703–412–9877.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This proposed rule is issued under sections 302 and 328 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA).

B. Background

On October 17, 1986, the President signed into law the Superfund Amendments and Reauthorization Act of 1986 ("SARA"). Pub. L. 99–499 (1986). Title III of SARA established a program designed to require state and local planning and preparedness for spills or releases of hazardous substances and to provide the public and local governments with information concerning potential chemical hazards in their communities. This program is codified as the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11001–11050.

Subtitle A of EPCRA establishes the framework for local emergency planning. The Statute required that EPA publish the Agency's list of "extremely hazardous substances" ("EHSs"). This had previously been published in November, 1985, by the EPA Administrator in Appendix A of the "Chemical Emergency Preparedness Program Interim Guidance" (CEPP Guidance), as the list of acutely toxic chemicals. The Agency was also directed to establish "threshold planning quantities" ("TPQs") for each extremely hazardous substance. Under section 302, a facility which has present an EHS in excess of its threshold planning quantity must notify the State emergency response commission and local emergency planning committee as well as participate in local emergency planning activities.

The purpose of the extremely hazardous substance list is to focus initial efforts in the development of State and local contingency plans. It is not intended to be a complete list of all chemicals that could potentially be hazardous to a community. The identification of a chemical that meets the EHS criteria does not in itself indicate the potential for serious effects in any release, accidental or routine. Thus, inclusion on the EHS list is not meant as a signal to state or local communities to ban or otherwise restrict use of a listed chemical. Rather, such identification indicates a need for the community to undertake a program to investigate and evaluate the potential for accidental exposure associated with the production, storage or handling of the chemical at a particular site. EPA also encourages communities to go beyond the EHS list when evaluating the hazards of facilities in their community, in that facilities handling chemicals not on the EHS list could be as hazardous as those handling EHSs.

To date, 46 chemicals have been delisted from the EHS list in previous rulemakings because they did not meet the toxicity criteria for the list and were originally listed under section 302 in error.

1. Regulatory Background

The list of extremely hazardous substances and their threshold planning quantities is codified in EPA regulations at volume 40 of the Code of Federal Regulations, part 355, appendices A and B (40 CFR, Part 355, Apps. A & B). EPA's explanation for the methodologies used to determine whether to list a substance as an extremely hazardous substance and for deriving the threshold planning quantities is found in preambles to the **Federal Register** notices which promulgated these rules. The relevant notices were published in the **Federal Register** on November 17, 1986 (51 FR 41570–41592), and April 22, 1987 (52 FR 13378–13410).

In the November 17, 1986 notice EPA, as required by EPCRA section 302, promulgated an interim final rule which, among other things, included a list of extremely hazardous substances and established their threshold planning quantities. While the interim final rule established enforceable requirements, the Agency simultaneously solicited public comments, as explained in a **Federal Register** notice issued on the same day (51 FR 41953–54).

EPA received public comment on the interim final rule and issued a final rule on April 22, 1987, which responded in its preamble to the public comments. The April 1987 final rule made a number of revisions to the interim final rule. Among other things, the April 1987 rule republished the extremely hazardous substance list, with the addition of four new chemicals, and revised the methodology for determining some threshold planning quantities (52 FR 13381).

Details of the methodology used to determine whether to list a substance as an extremely hazardous substance and for deriving the threshold planning quantities are found in the November 1986 notice at 51 FR 41573–41579 and 41580 (Attachment 1), in the April 1987 notice at 52 FR 13387–13392, and in technical support documents in the rulemaking records.

2. Summary of petitions

In this notice EPA is responding to seven petitions requesting action on substances listed as extremely hazardous substances. EPA received petitions from the Elemental Phosphorus Ad Hoc Solid Waste Group to delist phosphorus pentoxide (CAS #1314–56–3); from SmithKline Beecham to delist diethylcarbamazine citrate (CAS #1642–54–2); from Sumitomo Chemical America, Inc., to delist fenitrothion (CAS #122–14–5); from ICI America's, Inc. to delist or change the threshold planning quantity for paraquat (CAS #1910–42–5); from Huls America, Inc., to delist isophorone diisocyanate (CAS #4098–71–9); and from the Selenium Tellurium Development Association (STDA) to delist tellurium (CAS #13494–80–9). EPA also received a petition from Miles, Inc. requesting that the threshold planning quantities for azinphos-methyl (CAS #86–50–0) and fenamiphos (CAS #22224–92–6) be increased from the current 100 pounds to 10,000 pounds.

Today's notice proposes a rule to amend 40 CFR, part 355 (Appendices A and B), to delist phosphorus pentoxide, diethylcarbamazine citrate, fenitrothion and tellurium from the list of extremely hazardous substances and to revise the threshold planning quantity for isophorone diisocyanate from 100 pounds to 1,000 pounds.

EPA is denying the requests to delist paraquat and isophorone diisocyanate and the request to change the threshold planning quantities for azinphos-methyl and fenamiphos. These decisions constitute final agency action.

II. Proposed Modifications

EPA is proposing to remove the four chemicals noted above from the extremely hazardous substance list because review of the available toxicity data shows they do not meet the listing criteria. EPA believes these four chemicals were incorrectly listed.

EPA is proposing to revise the threshold planning quantity for isophorone diisocyanate from 100 to 1,000 pounds, based upon the Agency's own review of the physical and chemical properties of the chemical, even though revision of the threshold planning quantity was not requested in the petition.

Phosphorus pentoxide was listed on the basis of an abstract of a study of smoke from burning red phosphorus that gave LC_{50} values for guinea pigs of 0.061 mg/liter/1 hour and for mice of 0.271 mg/liter/1 hour (Ballantyne (1981)). An LC_{50} is the air concentration dose at which half the animals studied die. As explained in the November 17, 1986 (51 FR 41574), **Federal Register** notice, EPA listed a substance as an extremely hazardous substance if inhalation studies showed an LC_{50} value in tests of the most sensitive mammalian species of less than 0.5 mg/l over a period of exposure of eight hours or less.

As noted above, the Agency listed phosphorus pentoxide based upon an abstract (Ballantyne (1981)). The Agency now believes that this abstract should not be used as the basis for listing. The title of the abstract reported the toxicity of phosphorus pentoxide smoke. However, the study was actually performed using the smoke generated by burning red phosphorus. In burning red phosphorus, two studies (Tarnov (1980) and Burton et. al (1982)) have shown that the major product is phosphorus pentoxide. However, the Ballantyne abstract does not establish that the toxicity found was attributable to the phosphorous pentoxide in the smoke, or other chemicals in lower concentrations. Since there is no conclusive evidence to suggest that the animals in Ballantyne's study were primarily exposed to phosphorus pentoxide, the available data from Ballantyne's findings are insufficient to prove or disprove that the LC_{50} values in guinea pigs and mice satisfy the criteria for listing phosphorous pentoxide on the EHS list.

Information submitted by the Elemental Phosphorus Ad Hoc Solid Waste Group showed that the direct tests on phosphorous pentoxide show an LC_{50} value higher than the criteria for listing. In an unpublished Monsanto report (1987), rats were exposed to aerosolized phosphorous pentoxide for 4 hours, at levels up to 0.99 mg/liter. (It should be noted that although the analytical standards used in the analysis conducted for this study were phosphorous pentoxide, no information was obtained regarding the actual chemical species present in the chamber atmosphere.)

This is the only available study in the literature that provides direct evidence of the toxic potential of phosphorous pentoxide. The LC_{50} for phosphorous pentoxide was found to be greater than 0.99 mg/liter, which does not meet the criteria for listing for listing substances as an extremely hazardous substance. Since the Agency now believes that the abstract used as the basis for listing is invalid (the Agency was unable to obtain the actual report) and the only direct studies available to the Agency show that phosphorus pentoxide does not meet the listing criteria, the Agency is proposing to remove the chemical from the EHS list.

Diethylcarbamazine citrate was listed on the basis of a report in a Russian data compilation showing an LC_{50} inhalation value of 0.309 mg/liter/4 hours in rats. The citation number listed in the United Nations sponsored translation is incorrect, and additional details about the original study are unavailable. Methods used for this inhalation toxicity study could not be found to determine if they meet international standards, therefore, the toxicity values could not be verified.

An inhalation study sponsored by SmithKline Beecham indicated that a 1-hour exposure of rats to Diethylcarbamazine citrate at concentration of 1.63 mg per liter or 2.38 mg per liter produced no fatalities. Since the only studies available to EPA show that this chemical does not meet the listing criteria for inhalation (LC_{50} less than 0.5 mg per liter), the Agency is proposing to remove it from the EHS list.

Fenitrothion was initially listed because it appeared to meet the extremely hazardous substance criteria, based upon a study showing an LC_{50} of 0.378 mg/liter/4 hours (NIOSH/RTECS 1985). The delisting petition charged that this study was deficient in that the material tested contained a toxic impurity of unknown potency, and that the study overestimated the toxicity of fenitrothion itself, because the test material contained surfactants that would have made the test animal's skin and cell membranes more permeable to the test substance. Examination of a study submitted by the petitioner (Kohda et. al (1986)) reports an LC_{50} of above 2.210 mg/liter. In studying the report provided by the petitioner, the Agency agrees that the data by which the listing is based may have been in error for the reasons stated by the petitioner. Since the only other study available to the Agency shows that fenitrothion does not meet the listing criteria, EPA is proposing to remove this substance from the EHS list.

Tellurium metal was listed on the basis of a study (Lenchenko and Plotko (1969)) which reported an LD_{50} (median lethal dose, the dose that killed 50 percent of the test animals) oral toxicity of 20 mg/kg of body weight. As explained in the November 17, 1986 (51 FR 41574) **Federal Register** notice, EPA listed a substance as an extremely hazardous substance if oral studies showed an LD_{50} of less than or equal to 25 mg per kilogram (kg) of body weight. The petitioner brought to the Agency's attention that the study was actually on sodium tellurate (CAS #10102–20–2,

already listed as an EHS) and not on tellurium metal. The petitioner also provided a study (Prinsen (1991)) which showed an LD_{50} for tellurium metal in excess of 5000 mg/kg. Based upon this information, the Agency is proposing to remove tellurium from the EHS listing while maintaining the listing for sodium tellurate.

The Agency requests comments on whether it should proceed to delist these four chemicals based upon this information or any additional information submitted by commenters relating to whether these chemicals meet the section 302 listing criteria.

HULs America, Inc. submitted a petition to delist isophorone diisocyanate (IPDI). EPA is denying the petition to delist because IPDI meets the criteria for listing, as discussed in the next Unit on Petition Denials. However, in considering this petition, EPA noted that the threshold planning quantity had been determined based on IPDI's being a reactive solid at standard temperatures, when in fact it is a liquid and not highly reactive. Accordingly, EPA is proposing to change the threshold planning quantity for IPDI based on the methodology for determining threshold planning quantities for liquids instead of the methodology for reactive solids.

EPA's methodology for establishing threshold planning quantities for liquids, once it is determined that the substance meets the listing criteria, consists of initially determining the maximum short term exposure concentration in air that would not lead to serious irreversible health effects in the general population when exposed to the substance for relatively short duration. This is the so-called "level of concern." (See the Threshold Planning Quantities Technical Support Document, April 7, 1987.)

There are two ways to determine a "level of concern." If it is available for a chemical, EPA may use the Immediately Dangerous to Life and Health (IDLH) level established by the National Institute for Occupational Safety and Health (NIOSH). This is the maximum concentration of a substance in air to which a healthy worker can be exposed for 30 minutes and escape without suffering irreversible health effects or impairing symptoms.

If the IDLH value is not available, as is the case for most of the EHSs, the EPA uses an IDLH equivalent value using available toxicity data with an adjustment factor to estimate the IDLH value. For the initial TPQ for IPDI the LC_{50} of 0.12 mg/l over a 4 hour exposure period was multiplied by 0.1 to estimate the IDLH value.

The level of concern is then divided by a factor "V" which represents the extent to which the material can volatilize and become airborne and dispersed. This is explained in the November 17, 1986 **Federal Register** notice at 51 FR 41577. For liquids this involves knowing the molecular weight and vapor pressure. The derivation of the factor "V" for liquids is explained in Appendix 1 of the November 17, 1986 **Federal Register** notice for the interim final rule (51 FR 41580).

The final threshold planning quantity is then determined from a set of index values. The index values and their corresponding threshold planning quantities are found in the threshold planning quantity technical support document. Applying this methodology to IPDI gives it a threshold planning quantity of 1000 pounds. The calculations for this determination are found in the administrative record for this petition. EPA is, thus, proposing to raise the threshold planning quantity for IPDI from 100 to 1000 pounds.

III. Petition Denials

EPA is denying the petition of ICI Americas with respect to paraquat. The petitioner requests the Agency to remove paraquat from the extremely hazardous substance list or, in the alternative, to revise the threshold planning quantity.

Petitioner notes that the "paraquat" on the EHS list is actually paraquat dichloride since, strictly speaking, paraquat is a divalent cation which can form many different salts, and paraquat dichloride is the only commercially available paraquat salt in the United States. Further, the Chemical Abstract Service (CAS) number identified on the EHS list is the number for paraquat dichloride. Petitioner bases its request to delist paraquat (dichloride) on the fact that the only studies that show LD_{50} or LC_{50} tests below the Agency criteria for listing are tests on either the pure solid form of the chemical or the highly concentrated form of the solution. Petitioner claims that the toxicity for any commercially available form is much lower than the EHS listing criteria and that tests showing high toxicity are of no practical importance.

EPA agrees with petitioner that paraquat dichloride is the appropriate listed chemical. To clear any confusion that may result from the conflict between the paraquat listing and the CAS number, EPA is making a technical amendment to the EHS listing in 40 CFR Part 355 by substituting the term paraquat dichloride for paraquat (published elsewhere in this issue of the **Federal Register**). All indications from the petition are that the public has been complying with the regulations under the assumption that "paraquat" refers to the paraquat dichloride product.

EPA disagrees with petitioner that paraquat dichloride should be removed from the EHS list because only highly concentrated forms show high toxicity. Paraquat dichloride qualifies as an EHS because some form of it shows high toxicity that exceeds the Agency's criteria. This is the case for many animal tests used to determine toxicity for regulatory purposes. Animals may be dosed in concentrated forms or at very high levels to determine toxicity. The dose in the studies may be much higher than any found in actual practice. In the case of LD_{50} or LC_{50} tests, half the animals die. If these tests show 50 percent mortality at a relatively low dose, they at least raise concerns that qualify for listing. Smaller numbers of subjects may be affected at much lower doses, but that does not eliminate any concern for the tested chemical. Paraquat dichloride is listed because it is grouped with those chemicals that exceed Agency criteria in some form.

The basis for listing paraquat was a study (Murray and Gibson, 1972) which showed a formulation containing paraquat dichloride as having an oral (guinea pig) LD_{50} value of 22 mg/kg. Although the toxicity of the paraquat dichloride formulation is caused solely by the paraquat ion, based on the LD_{50} of 22mg/kg for paraquat ion, ICI estimated an oral LD_{50} value of 30.4 mg/kg for paraquat dichloride which does not meet the EHS criteria. ICI sponsored two acute inhalation studies in rats (ICI, 1989). The studies resulted in an LC_{50} value of .001 mg/liter for the paraquat ion, which can be estimated for paraquat dichloride to be an LC_{50} of .00138 mg/liter. This value would meet the EHS criteria for listing of 0.5 mg/liter as noted above. EPA is changing the basis for listing value from oral LD_{50} of 22 mg/kg for paraquat ion to inhalation LC_{50} of 0.00138 mg/liter for paraquat dichloride.

Petitioner, alternatively, requests that the threshold planning quantity for paraquat dichloride should be higher than the current amount of 10 pounds. The threshold planning quantity for paraquat is 10 pounds for the chemical in finely powdered form (particle size under 100 microns), in molten form, or in solution. For paraquat in solid form with particle size greater than 100 microns the threshold planning quantity is 10,000 pounds. EPA's reasoning for determining these levels is found in the November 17, 1986 interim final rule notice at 51 FR 41575–76 and 41577, as amended by the April 22, 1987 final

rule notice at 52 FR 13390. A summary of that reasoning follows.

The paraquat listed, essentially the dichloride salt, is a solid in solution. There is available for paraquat an IDLH level of 1.5 milligrams per cubic meter (mg/m^3). This converts to an Index Value of .0015, which results in a threshold planning quantity of 10 pounds. While the November, 1986 notice for the interim final EHS listing rule applied this calculation to all solids, the April 22, 1987, notice (52 FR 13390–91) modified this by applying this calculation to solids only if they have a particle size less than 100 microns, if they are handled in solution or molten form, or if they have a high rating for reactivity. For particle sizes over 100 microns, the threshold planning quantity is 10,000 pounds. Paraquat dichloride, therefore, has two threshold planning quantities depending on its particle size and whether it is used in solution.

The petitioner requests that the Agency base the level of concern for paraquat dichloride on the LD_{50} or LC_{50} tests rather than the IDLH. EPA disagrees. The IDLH, while it has flaws, is the best available measure for determining a level of concern because it is based on actual human data. When an IDLH is available, EPA declines to use conversion factors, as it does for those substances for which IDLH values are not available (*see* 51 FR 41576), because these factors are even rougher measurements.

NIOSH lists the two chemicals (paraquat and paraquat dichloride) as synonyms (NIOSH/RTECS 1983 Synonyms, Volume 1, p. 719); therefore, the Agency considers the ionic form of paraquat as the dichloride salt in a solution. Since the IDLH value applies to both the salt and the solution, EPA has decided not to remove the chemical from the EHS list or modify the TPQ.

The paraquat ion is reportable as a solution (or mixture) of paraquat dichloride and a carrier (for example, water). For threshold purposes, the facility only needs to consider the weight percent of paraquat dichloride that was placed in the solution.

Miles, Inc., has submitted a petition requesting that the 10,000-pound TPQ apply to azinphos-methyl and fenamiphos in the Miles products Guthion 2L and Nemacur 3. Both of these chemicals have TPQs of 10 pounds that apply when the chemicals are in finely powdered form, in molten form, or in solution, as calculated using the same methodology applied to paraquat dichloride. The 10,000-pound TPQ applies to the solid form with particle size greater than 100 microns. The petitioner submits that both of these compounds are "waxy, amorphous solids with low melting points and their technical grade materials used for production are generally liquid at summer temperatures." The petitioner stated that the TPQ for the chemicals should be based upon their being liquids using the methodology described for IPDI, above, in unit II. This would raise the TPQ to 10,000 pounds.

EPA disagrees. The Farm Chemicals Handbook (1984 p. C161) lists fenamiphos as a brown, waxy solid. The Hawley handbook (1981) lists azinphos-methyl as a brown waxy solid as well. Since these references, used as background to the listing, show these chemicals as solids, the EPA considers the chemicals as solids as well. They would be near the melting point but never quite reach it. Molten solids are not treated as liquids under the TPQ methodology, because the solids have to be raised above standard temperature in order to become molten. Since EPA has no way of knowing at what temperatures facilities have the molten solids (to determine volatilization), EPA chose to consider solids different from chemicals that are liquid at standard temperatures.

Instead, EPA accounts for solids that become liquids (molten form) with the two tiered threshold. When handled in molten form, the TPQ for these chemicals would be 10 pounds because of the possibility of volatilization. However, even in molten form, significant amounts of vapor are not likely to be generated. The Agency examined the fraction of volatilization expected for the solids on the list and found that it ranges from 0.3 to 0.008 pounds/minute per pound spilled (see Threshold Planning Quantities, Technical Support Document, April 7, 1987, page 27). Since data were not available for all solids and to be conservative, the Agency chose to incorporate the 0.3 fraction into the reporting requirements. If a facility is handling the solid in molten form, the amount molten should be multiplied by 0.3 to obtain the actual amount to be compared to the threshold planning quantity for reporting (see 40 CFR 355.30(e)(iv)).

HULs America Inc. submitted a petition to delist isophorone diisocyanate (IPDI). IPDI had been listed because it met the criteria for extremely hazardous substance listing, on the basis of two aerosol inhalation-toxicity studies in rats. The 4 hour LC_{50} is .26 mg per liter, which is less than the LC_{50} of 0.5 mg/liter which qualifies it as an extremely hazardous substance under Agency criteria (51 FR 41574). The delisting petition made the following points. This material is manufactured in a closed system that does not use high pressure, and contends that unusual measures are required to generate test atmospheres containing IPDI for toxicity testing. If the substance is aerosolized, particles would be expected to precipitate out of the air. The material is not volatile under normal conditions. It does not react rapidly with water to generate heat that might cause volatilization. The low vapor pressure led the Department of Transportation to remove IPDI from its list of materials that are toxic by inhalation, according to the petition.

EPA disagrees. Petitioner's argument is essentially that the test used to determine acute toxicity subjects the animals to extreme conditions not likely to be found in reality. This, however, is the case for many animal tests used to determine toxicity for regulatory purposes. In fact, a similar case can be made for most LD_{50} or LC_{50} tests, since the levels at which animals are dosed are far higher than would be delivered in actual conditions. The fact is that IPDI is toxic at low levels, based on an LC_{50}, compared to other chemicals regardless of the conditions of the chemical during the test. This qualifies the chemical for listing.

Extrapolations from the extreme conditions of testing may then be used to determine regulatory levels. For example, to determine a level of concern for chemicals on the EHS list in calculating threshold planning quantities, as noted above, EPA applies a conversion factor to the acute toxicity tests. Conversion factors may range from one-tenth to one-hundredth of the levels found in the acute toxicity tests. This is explained in the November 17, 1986 Interim Final Rule preamble at 51 FR 41576. For listing purposes, however, conditions of testing are not generally relevant.

EPA, however, as noted above, has taken into account physical/chemical properties of IPDI in proposing to revise the TPQ.

EPA believes that the data used to list paraquat, azinphos-methyl, fenamiphos and isophorone diisocyanate is sound and that the denial of these petitions is consistent with the listing criteria and TPQ methodology. At this time, the Agency is not planning to modify the listing criteria nor the TPQ methodology. The Agency however, will accept any comments on additional criteria which can be used to increase the usefulness of the EHS list and the TPQ methodology.

In the consideration of these petitions, HULs America brought to the Agency's attention that there may be at least three competing products with toxicity and physical/chemical properties very similar to IPDI and, therefore should be treated the same. Huls maintains none of the chemicals should be listed. EPA is requesting information on other chemicals, currently not listed, for which toxicity meets the criteria, and which therefore warrant listing. At this time, EPA is not proposing to increase the number of chemicals on the EHS list; however, in the future it will propose to list chemicals with toxicity information showing that they warrant listing.

The reader should note that the Agency is making several technical corrections to the 40 CFR part 355 elsewhere in this issue of the **Federal Register**. As mentioned earlier in this preamble, the listing of "paraquat" is being corrected to read "paraquat dichloride." "Phenylthiourma" in 40 CFR part 355, appendix A should read "phenylthiourea. "The listing of hydrogen chloride in 40 CFR part 355, appendix B should read "hydrogen chloride (gas only)." "Quabain" in 40 CFR part 355, appendix B should read "ouabain."

IV. Regulatory Analyses

A. Executive Order 12866

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or lean programs or the rights and obligations or recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic effect on a substantial number of small entities.

EPA has examined the rule's potential effects on small entities as required by the Regulatory Flexibility Act. It has determined this rule will have no adverse effect on small entities because it reduces the number of chemicals which would potentially make businesses subject to the reporting requirements. Therefore, I certify that today's proposed rule will not have a significant economic effect on a substantial number of small entities.

C. Paperwork Reduction Act

This rule relieves facilities from having to report the presence of these four chemicals to the State Emergency Response Commissions and Local Emergency Planning Committees. If these facilities have no other Extremely Hazardous Substances, they will no longer be required to participate in the emergency planning process required by the statute. Therefore, there are no information collection requirements for OMB to review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 355

Environmental Protection, Air pollution control, Chemicals, Chemical accident prevention, Chemical emergency preparedness, Community emergency response plan, Community right-to-know, Contingency planning, Disaster assistance, Extremely hazardous substances, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Penalties, Reportable quantity, Reporting and recordkeeping requirements, Superfund, Threshold planning quantity, Water pollution control, and Water supply.

Dated: September 30, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 355 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 355—EMERGENCY PLANNING AND NOTIFICATION

1. The authority citation for part 355 continues to read as follows:

Authority: 42 U.S.C. 11002, 11004, and 11048.

Appendix A to Part 355—[Amended]

2. Appendix A to part 355 is proposed to be amended by removing "e" from the notes column and changing the threshold planning quantity to 1,000 pounds for Isophorone Diisocyanate, CAS No. 4098–71–9. Appendix A to part 355 is further proposed to be amended by removing the following entries:

CAS No.	Chemical name
1642–54–2	Diethylcarbamazine Citrate.
122–14–5	Fenitrothion.
1314–56–3	Phosphorus Pentoxide.
13494–80–9 ...	Tellurium.

Appendix B to Part 355—[Amended]

3. Appendix B to part 355 is proposed to be amended by removing "e" from the notes column and changing the threshold planning quantity to 1,000 pounds for Isophorone Diisocyanate, CAS No. 4098–71–9. Appendix B to part 355 is further proposed to be amended by removing the following entries:

CAS No.	Chemical name
122–14–5	Fenitrothion.
1314–56–3	Phosphorus Pentoxide.
1642–54–2	Diethylcarbamazine Citrate.
13494–80–9 ...	Tellurium.

[FR Doc. 94–25196 Filed 10–11–94; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 355

[FRL–5088–9]

Extremely Hazardous Substances List and Threshold Planning Quantities; Emergency Planning and Release Notification Requirements; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: The Agency published two Appendices to a final regulation at 52 FR 13378 (April 22, 1987). This document corrects errors in Appendices A and B to 40 CFR Part 355.

EFFECTIVE DATE: October 12, 1994.

FOR FURTHER INFORMATION CONTACT: John Ferris, Chemical Engineer, Chemical Emergency Preparedness and Prevention Office, 5101, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The Emergency Planning and Community Right-to-Know Information Hotline can also be contacted at 1–800–535–0202.

SUPPLEMENTARY INFORMATION: The Agency has identified the following typographical and other technical errors in the **Federal Register** of April 22, 1987. The listing of "paraquat" in appendices A and B of Part 355 should read "paraquat dichloride." This change is to be consistent with the Chemical Abstracts Service (CAS) number identified on the extremely hazardous substances (EHS) list. Paraquat dichloride is the only commercially available paraquat salt in the United States.

"Phenylthiourma" in 40 CFR Part 355, Appendix A should read "phenylthiourea" (typographical error). The listing of hydrogen chloride in 40 CFR part 355, Appendix B should read "hydrogen chloride (gas only)" (typographical error). "Quabain" in 40 CFR Part 355, Appendix B should read "ouabain" (typographical error).

List of Subjects in 40 CFR Part 355

Environmental Protection, Air pollution control, Chemicals, Chemical accident prevention, Chemical emergency preparedness, Community emergency response plan, Community right-to-know, Contingency planning, Disaster assistance, Extremely hazardous substances, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Penalties, Reportable quantity, Reporting and recordkeeping requirements, Superfund, Threshold planning quantity, Water pollution control, and Water supply.

Dated: August 23, 1994.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, 40 CFR part 355 is amended to read as follows:

PART 355—EMERGENCY PLANNING AND NOTIFICATION

1. The authority citation for part 355 continues to read as follows.

Authority: 42 U.S.C. 11002, 11004, and 11048.

Appendix A to Part 355—The List of Extremely Hazardous Substances and Their Threshold Planning Quantities

2. In Appendix A, the entry "paraquat" is revised to read "paraquat dichloride" and the entry "phenylthiourma" is revised to read "phenylthiourea."

Appendix B to Part 355—The List of Extremely Hazardous Substances and Their Threshold Planning Quantities

3. In Appendix B, for CAS #1910–42–5, the chemical name is revised to read "paraquat dichloride"; for CAS #7647–01–0, the entry "hydrogen chloride" is revised to read "hydrogen chloride (gas only)"; and for CAS #630–60–4, the entry "quabain" is revised to read "ouabain".

[FR Doc. 94–25197 Filed 10–11–94; 8:45 am]

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federal register

Wednesday
October 12, 1994

Part VII

Department of Transportation

Federal Highway Administration

49 CFR Part 397
Transportation of Hazardous Materials; Highway Routing; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 397

[FHWA Docket No. MC–92–6]

RIN 2125–AC80

Transportation of Hazardous Materials; Highway Routing

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is adopting regulations to implement subsections 105 (b) and (c) of the Hazardous Materials Transportation Act of 1975 (HMTA) as amended by the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA). The regulations include Federal standards and procedures which the States and Indian tribes must follow if they establish, maintain, or enforce routing designations that (1) specify highway routes over which placarded non-radioactive hazardous materials (NRHM) may and may not be transported within their jurisdictions, and/or (2) impose limitations or requirements with respect to highway routing of such hazardous materials. Included are amendments to the procedures in 49 CFR part 397, subpart E, relating to Federal preemption and waivers of preemption, and new procedures for the resolution of disputes involving State or Indian tribe NRHM routing designations. States and Indian tribes are also required to furnish updated NRHM route information for publication by the FHWA. The existing motor carrier regulations with NRHM routing requirements have been incorporated into this regulation, along with the new requirements which require motor carriers to comply with the NRHM routing designations of States and Indian tribes. The intent of these requirements is to ensure that NRHM are moved safely and that commerce is not burdened by restrictive, uncoordinated, or conflicting requirements of various jurisdictions.

EFFECTIVE DATE: November 14, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Pamela K. Deadrick, Hazardous Materials Routing and Special Studies Branch (HHS–13), Office of Highway Safety, (202) 366–8788; or Mr. Raymond W. Cuprill, Office of Chief Counsel (HCC–20), (202) 366–0834, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except for legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1990, the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) (Pub. L. 101–615, 104 Stat. 3244) was enacted and amended the Hazardous Materials Transportation Act of 1975 (HMTA) (Pub. L. 93–633, 88 Stat. 2156). The FHWA was delegated the responsibility by the Secretary, as published in the **Federal Register** (56 FR 31343, July 10, 1991; 49 CFR 1.48), to implement subsections 105 (b) and (c) of the HMTA (now codified at 49 U.S.C. §§ 5112 and 5125 (1994), Pub. L. 103–272, 108 Stat. 745). This included the rulemaking and program responsibility for hazardous materials highway routing, with the exception of currently pending applications for inconsistency rulings and non-preemption determinations which remain a responsibility of the Research and Special Programs Administration (RSPA).

Section 5112(b) of title 49, United States Code, requires the Secretary to establish by regulation standards for States and Indian tribes to use in establishing, maintaining, and enforcing these routing designations. These Federal standards shall provide for enhancement of safety; public participation; transportation of hazardous materials between adjacent areas; consultation with other States, Indian tribal and local governments; through highway routing; reasonable time to reach agreement between affected States or Indian tribes; avoidance of unreasonable burden on commerce; timely establishment of State and Indian tribe routing; reasonable routes to terminals and other facilities; State responsibility for local compliance; and a number of "factors" for States and Indian tribes to consider. Section 5112(b)(2) prohibits the Secretary from assigning specific weights to the "factors to consider" in the Federal standards, but Sections 5125(c) and 5112(d) do provide for Federal preemption and dispute resolution of State and Indian tribe routing designations to allow for consistent application of the Federal standards among adjacent jurisdictions.

Section 5112(c) also requires the Secretary, in coordination with the States, to periodically update and publish a list of currently effective hazardous materials highway route designations.

The FHWA recognizes that 49 CFR 177.810 exempts State and local regulations and ordinances regarding the kind, character, or quantity of any hazardous material, except radioactive materials, transported through urban tunnels used for mass transportation from parts 170 to 189 of the hazardous materials regulations. However, this section does not exempt State, Indian tribes and local governments from having to comply with the routing regulations applicable to the transportation of Class 7 (radioactive) materials (49 CFR 397, subpart D) or the routing regulations established herein. Therefore, tunnel routing designations are now subject to the same Federal standards and procedures as are other highway routing designations.

To assist the States and local governments in the development of routes, the DOT published "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials" (latest edition DOT/RSPA/OHMT–89/01 dated August 1992) and "Guidelines for Applying Criteria to Designate Routes for Transporting Hazardous Materials" (latest edition DOT/RSPA/OHMT–89–02 dated July 1989). The latter publication is being updated to provide guidance on the Federal standards in this regulation. Both guides are useful in developing highway routing requirements for hazardous materials. These documents are available to the public through the National Technical Information Service, Springfield, Virginia 21661.

The FHWA published a notice of proposed rulemaking and a notice of public hearings entitled "Transportation of Hazardous Materials; Highway Routing" in the **Federal Register** on August 31, 1992 (57 FR 39522). The FHWA requested comments from any interested parties to be submitted to Docket MC–92–6 by October 30, 1992. In addition, the FHWA held four public hearings to solicit comments from interested parties in October at Washington, D.C.; Dallas, Texas; San Francisco, California; and Rosemont, Illinois.

Discussion of Comments

A total of fifty-six commenters responded to this proposed regulation by written submission to the docket and/or presentation at the public hearings. The commenters represented a total of fifty-two organizations, including twenty-seven commercial/trade affiliated organizations representing shippers and carriers, fourteen State government organizations, five local governments,

three Federal agencies, one Indian tribe, one citizens' group, and one consulting firm.

Nineteen commenters supported and eight opposed the overall format and/or intent of the proposed regulations. The remaining commenters did not express overall opposition or support for the regulation but did comment on specific parts of the regulation. Fifty-four commenters discussed details of the proposed rule, and many recommended changes to various aspects of the rule. The following topics were of main concern.

Definitions

Definitions were discussed by fifteen commenters who recommended clarification of some definitions and additional definitions for some terms used in the regulation. These comments were submitted from eight members of the shipper-carrier industry, four States, one local government, one Federal agency and a citizens' group.

Nine commenters recommended clarification of the definition of "routing designations." The main concern was that routing designations broadly defined could include licenses, permits, bonds, and other restrictions or requirements which might not be route-specific. In response to these concerns, the FHWA has clarified routing designations to include route-specific features, such as: designations of routes, restrictions on routes, curfews/time-of-travel restrictions on routes, lane restrictions, routing bans, port-of-entry requirements, and weight restrictions on routes which are specifically related to NRHM. Common State, Indian tribal, or local regulatory requirements are not "routing designations" when they are not route specific. These can include fee, bonding/insurance, notice, escort, permit, registration, inspection, and communication requirements which are generally applied to entire jurisdictions rather than specific highway routes. Such jurisdictional restrictions are not covered under this regulation. Their possible preemption is determined by the RSPA, not the FHWA. Other restrictions on motor vehicles that are not specific to the transportation of hazardous materials, such as height, weight, or width restrictions for roads and bridges, or prohibitions on the use of downtown streets by trucks over certain sizes, are not affected by this regulation.

Motor Carrier Responsibilities for Routing

Five commenters recommended clarifying the applicability of the rule to placarded and marked vehicles. These commenters were concerned that the regulation would be applicable to placarded NRHM transport while other motor carrier regulations are applicable to both placarded and marked NRHM transport. The FHWA has amended § 397.67(b), which deals with the motor carriers responsibilities, to include motor vehicles that are marked or placarded.

One State recommended that reasonable deviation cover highway and law enforcement situations that require a driver to take an alternative route. The FHWA agreed with this recommendation and amended § 397.67(b)(3) to provide for highway agency detours, such as in work zones, and law enforcement situations.

The FHWA also amended the terms "Class A or Class B explosives" to "Explosives, in Class 1, Division 1.1, 1.2, 1.3" so as to be consistent with the current terminology in the Hazardous Materials Regulations (49 CFR 171–180).

Quantities of NRHM

Four commenters recommended limiting the placarded quantity and type of NRHM for which the regulation applied, such as to bulk rather than to vehicles transporting small individual cylinders of hazardous materials. The FHWA did not adopt this recommendation because 49 U.S.C. § 5112(a)(1) requires that the highway routing regulations apply to a vehicle if such vehicle is transporting in commerce a hazardous material for which placarding of the vehicle is required. This section authorized the Secretary of Transportation to extend application of the regulations to other hazardous materials, but did not authorize limiting their application to only "in bulk" hazardous materials.

Factors

Twenty-four commenters discussed the factors which States and Indian tribes must consider in developing NRHM routing designations. These commenters included twelve shippers and carriers, four States, three local governments, three Federal agencies, one citizens' group and one consulting firm. Eleven commenters recommended clarification of the factors and development of specific measures or benchmarks by which the factors could be evaluated. These commenters were concerned that the factors can be applied differently by various jurisdictions, resulting in different routing designations. Sixteen commenters indicated that specific risk criteria should be considered more important than the other factors, while seven commenters recommended the Federal government establish minimum criteria for each of the factors. The FHWA declined to adopt these recommendations because the HMTUSA specifically provided the States and Indian tribes with the flexibility to determine how each standard should be applied.

Five commenters mentioned the importance of providing updated Federal guidelines for analyzing the factors; five commenters recommended additional factors, including accident histories, the use of tunnels, and hours of service for drivers; and several commenters recommended clarification of the terms "unreasonably burden commerce," "climatic conditions," and "congestion factors." In response to these comments, the FHWA revised several of the factors. The factor on "terrain considerations" was amended to include both accident severity and clean up of spills; "alternative routes" was amended to specifically consider safety; "climatic conditions" was amended to provide examples, such as snow, high winds, ice, and fog; and "consideration of accident history" was added to the congestion factor. Additionally, the FHWA is in the process of updating the guidelines for analyzing routing designations and intends to address each of the factors in the updated publication.

Grandfather Provision

The notice of proposed rulemaking contained a section incorporating the grandfather clauses included in the HMTA as amended by the HMTUSA. One clause provides that routing designations established before November 16, 1990, are not required to comply with the factors discussed in § 397.71 of the regulation. Another clause provides that the routing designations established before the date of issuance of these regulations do not have to be in accordance with the routing standards dealing with public participation, consultation with other jurisdictions, and timeliness.

The FHWA received numerous comments from the public expressing their concern that incorporation of these grandfather clauses in the regulation resulted in unnecessary confusion. The FHWA agrees. A strict reading of the grandfather clauses would make the factors established in this regulation retroactively applicable to routing designations established after enactment of the HMTUSA on November 16, 1990. It would be impracticable and unduly burdensome on the States and Indian tribes to interpret the statute in such a manner. The FHWA would be applying to these routing designations factors that

did not exist in Federal regulations at that time. As a result, the FHWA has decided to apply the factors established in this final rule prospectively from 30 days after the date of publication in the Federal Register.

This action should not be interpreted to mean that the routing designations established prior to the publication of the final rule are not subject to Federal preemption. These routing designations are still subject to Federal preemption under 49 U.S.C. § 5125(a), if—

(1) Complying with a requirement of the State, political subdivision, or tribe and a requirement of this chapter or a regulation prescribed under this chapter is not possible; or

(2) The requirement of the State, political subdivision, or tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

Jurisdictional Coordination

Twenty-two commenters addressed the issue of jurisdictional coordination between Federal, State, Indian tribal, and local governments in the routing designation process. These commenters included ten members of the shipper-carrier industry, eight States, two local governments, one Federal agency, and one consulting firm. Fourteen commenters expressed concern about the role of the Federal government versus State and local governments. Many of the commenters did not recommend changes to the regulation but expressed their concerns about the administration of this regulation.

Eleven commenters discussed the potential for conflicts between States, between local jurisdictions, and between States and local jurisdictions. Eight commenters were concerned that the required communications between States, Indian tribes, and local jurisdictions would not be adequately coordinated. The FHWA revised § 397.71(b)(3)(i), dealing with consultation with others, to provide for better interagency coordination.

Comments from shippers and carriers recommended increasing the State, Indian tribal, or local governments' burden in establishing and administering a routing designation. For example, their recommendations included requiring States to produce a risk analysis for each class of NRHM for a specific route designation and for each route designation that transfers risk from one jurisdiction to another. They also recommended that States develop consistent standards to be used by all local jurisdictions. State and local governments, on the other hand, expressed concerns about the proposed requirements that would be imposed on them in establishing and maintaining routing designations. These comments focused on the administrative burdens associated with the proposed requirements, such as those involving records maintenance, public hearings, and those that would require a finding that any routing designation would enhance public safety.

The FHWA believes that the increased requirements proposed by the shipper and carrier industries would unduly burden State and local governments without producing a corresponding safety benefit. Similarly, the FHWA believes that the requirements proposed in the NPRM are the minimum necessary to ensure that States or Indian tribes adopting routing designations fully and fairly consider all of the factors required under the law. Accordingly, the FHWA is promulgating this final rule without a change in the proposed coordination requirements for establishing and administering route designations.

Two commenters recommended that States or local governments be allowed to have varying standards which could differ based on the type and quantity of material involved. The FHWA believes that no changes are necessary since States are already provided the latitude to determine how the standards in this regulation or any additional standards a State or Indian tribe select are to be applied.

Dispute Resolution, Preemption, and Waivers of Preemption

Preemption, waivers of preemption, and dispute resolution procedures were discussed by fourteen commenters. These commenters included nine members of the shipper-carrier industry, three States, one Federal agency, and one citizens' group. Four commenters addressed eligibility or standing to petition under the dispute resolution process, with three commenters recommending the local jurisdiction be eligible to participate in the dispute resolution process. The FHWA decided not to adopt these recommendations because the HMTUSA authorizes the FHWA only to resolve disputes between States and between States and Indian tribes. The FHWA believes that States will consider the views and concerns of local jurisdictions in formulating their positions on preemption and preemption waiver determinations. Additionally, the dispute resolution procedures provide affected local jurisdictions with notice and the opportunity to participate, through their State, in the process.

Eight commenters addressed waiver of preemptions. Two suggested that local governments could use this process to circumvent State administration of routing designations, another recommended the FHWA prevent local governments from seeking a waiver of preemption when the State has disapproved the designation, and one remarked that the waiver of preemption process provides protection for jurisdictions where unique circumstances justify extraordinary routing measures. The FHWA has decided not to adopt these recommendations because it believes that the finding required by 49 CFR 397.219 (that the waived routing designation provide an equal or higher level of highway safety to the public without unreasonably burdening commerce) is sufficient to ensure that the waiver process is not used arbitrarily. Additionally, States are able to express their views as part of the process.

Four commenters discussed the status of a routing designation pending a preemption determination, with three recommending the use of an administrative stay until the determination is issued. Another recommended the interim status of a routing designation be decided by the FHWA. Two commenters recommended an administrative appeals process. The FHWA believes no changes are necessary because the procedures in 49 CFR part 397, subpart E, maintain the status of a highway routing pending a preemption determination and provide for administrative reconsideration and judicial review.

The FHWA, in considering all the comments and the current provisions in subpart E of 49 CFR part 397, determined that the proposed provisions should be incorporated into the existing procedures in subpart E rather than being included as redundant procedures unique to this final rule. Consequently, § 397.79 Preemption determination procedure; § 397.81 Waivers of preemption; § 397.85 Timeliness; and § 397.87 Judicial review of preemption or waiver of preemption decision have been removed and this final rule has been amended to refer to the applicable sections of subpart E, and subpart E is amended to refer to the provisions of this final rule.

Public Notification

Public notification procedures were discussed by twenty-nine commenters. This included seventeen members of the shipper-carrier industry, five States, three Federal agencies, two local governments, one citizens' group and

one consulting firm. Thirteen commenters discussed public participation. Highway users tended to recommend more public notification through publications, such as newspapers or the Federal Register, while two government agencies recommended reducing the publication requirements because of costs. Additionally, five commenters discussed public hearing requirements and recommended providing an opportunity for a public hearing rather than requiring a public hearing. The FHWA has revised the regulation to grant States and Indian tribes discretion to hold public hearings on proposed NRHM routing designations after providing the public with notice and an opportunity to comment. The FHWA also believes publication of the notice for both the comment period and the public hearing, if one is held, to be most appropriately administered at the State and Indian tribe level, through publications, such as the official register of the State regulations, rather than through publication in the Federal Register.

Reporting of Routing Designations

Ten commenters discussed the requirement for State and Indian tribes to report routing designations to the FHWA. The majority recommended the FHWA frequently publish new and existing route designations in the Federal Register. Several also recommended that States and Indian tribes, as a prerequisite, be required to report their intention to establish a route designation to the FHWA for publication in the Federal Register. Upon further review, the FHWA determined it would be more practical and appropriate to provide some form of current information on established routing designations; consequently, the FHWA is considering alternative methods, such as establishing an electronic bulletin board, to update and provide this information to the public in a timely manner along with publishing annual lists of routing designations in the Federal Register.

Signs, Maps and Lists of Routing Designations

Ten commenters were concerned about the use and availability of road signs and maps. Highway users were generally in favor of requiring the use of road signs. They recommended that routing designations be enforceable only to the extent they are signed. Several States, notably California and Colorado, have successfully operated rather extensive and efficient routing systems through the use of lists and maps rather than signs. The requirement to sign all routing designations could also be a considerable administrative and economic burden for States which have or develop extensive routing designations. Therefore, the FHWA declines to adopt this suggestion.

Reasonable Routes to Terminals and Other Facilities

Reasonable access to terminals and other facilities was discussed by fifteen commenters, including twelve shippers and carriers, one State, one Federal entity, and one local agency.

Nine commenters representing shippers and carriers of fuels and farm supplies recommended more flexibility be provided for their products in designating route restrictions because many of their deliveries are local and unplanned. Seven of these commenters, mostly representing short-haul, irregular route carriers, recommended they be exempted from the proposed limits on reasonable access deviations, because they could impose a financial burden on them. The FHWA declined to adopt these recommendations because the HMTUSA was specific on providing the States and Indian tribes with the flexibility to accommodate local and special interests which may be unique to an area's geographic or commercial situation.

Three government agencies recommended a larger maximum deviation distance, whereas three carriers recommended a shorter maximum deviation. In response to these comments, the FHWA amended § 397.71(b)(7) by replacing the proposed requirement that such routes or deviations not exceed twice the distance of the most direct route with a requirement that States or Indian tribes which establish or provide for reasonable access to and from designated routes use the shortest practicable route based upon consideration of 13 factors listed in paragraph (b)(9) of that section.

Several commenters recommended clarification of the applicability of reasonable access and through routing provisions to local deliveries. The FHWA revised the reasonable access provisions to also apply to pickup and deliveries.

Through Routing

Through routing issues were discussed by twenty-seven commenters, including nineteen shippers and carriers, three Federal agencies, three States, one Indian tribe, and one citizens' action group. Fifteen commenters recommended a decrease in the maximum deviation distance and two commenters favored an increase to as much as twice the distance of the most direct route. Four commenters recommended elimination of percentage-based permissible routing deviations and suggested that consideration of the factors would be adequate. Three commenters also indicated that it was inappropriate to use an arbitrary percentage to determine the length of permissible deviations when such a percentage has no correlation to safety. Four commenters recommended clarifying how the maximum deviation limitation would be applied to each designated routing encountered during a trip or to the sum of all deviations contained in an entire trip. Seven commenters recommended clarifying the difference between through routing and reasonable routes to terminals and other facilities, and when the separate regulations are applicable Several of the commenters recommended that deviations from through routing should only be implemented when the deviation is safer than the through route or at least as safe and not an unreasonable burden on commerce. The FHWA has revised the section on through routing to consider public safety and economic burden (rather than use only percentages and mileage measurements). The revised section provides a relationship between route deviations and public safety and requires that new routing designations have substantially lower relative risk than the current routing. When the relative risk of the routing deviation is not substantially lower, the potential economic effect becomes a significant factor.

Discussion of Final Rule

Purpose and Scope

The FHWA is implementing the requirements of the HMTUSA in a new subpart C, Routing, in Part 397 of Title 49, Code of Federal Regulations. This regulation implements the requirements of the HMTUSA by establishing Federal standards and procedures which States and Indian tribes are required to follow if they establish, maintain, or enforce routing designations for the highway transportation of non-radioactive hazardous materials. The intent of these requirements is to ensure that NRHM are moved safely and that commerce is not burdened by restrictive, uncoordinated, or conflicting requirements of various jurisdictions. The standards and requirements of this regulation, however, allow for the flexibility intended in the HMTUSA. The FHWA will not designate routes

used for transporting NRHM. Any State or Indian tribe that chooses to establish, maintain, or enforce NRHM routing designations is required to comply with the Federal standards established in this regulation. The States and Indian tribes are also required to ensure that any NRHM routing designations by political subdivisions under their jurisdiction are established, maintained, and enforced in accordance with this regulation. Any NRHM routing designations that fail to comply with the standards can be preempted. Any State, political subdivision thereof, Indian tribe, business, organization, or individual affected by a NRHM routing designation can apply to the Federal Highway Administrator (Administrator) for a preemption determination pursuant to 49 CFR 397, subpart E, which contains procedures for Federal preemption determinations, waivers of preemptions, and petition for reconsideration. Procedures for dispute resolution are included in this final rule (49 CFR 397, subpart C).

The regulations require States and Indian tribes to report existing NRHM routing designations within their boundaries to the FHWA and, thereafter, to report any additions or changes to these routing designations 60 days after the effective date of designation.

Applicability

The provisions of this regulation are applicable to States, including any political subdivisions, and Indian tribes that establish, maintain, or enforce any highway routing designations over which placarded NRHM may or may not be transported. The regulation also contains several provisions which are applicable to motor carriers transporting NRHM.

This regulation requires States, including political subdivisions, and Indian tribes to comply with Federal standards in establishing NRHM highway routing designations and to follow certain procedures. This regulation also requires States and Indian tribes that establish, maintain, or enforce routing designations to report these routing designations to the FHWA.

Motor Carrier Responsibility for Routing

Motor carriers transporting NRHM as of the effective date of this regulation are required to comply with the NRHM routing designations of States or Indian tribes. Where States and Indian tribes have not established NRHM routing designations, motor carriers are required to operate in accordance with 49 CFR 397.67, previously set forth in 49 CFR 397.9(a), over routes that avoid heavily populated areas, places where crowds are assembled, tunnels, narrow streets, or alleys. The routing plan requirements previously set forth in 49 CFR 397.9(b) for transporting Class 1 explosives, divisions 1.1, 1.2, 1.3, as defined in 49 CFR 173.50 and 173.53, have also been incorporated into the same section.

The Federal regulations for highway routing of Class 7 (radioactive) materials, 49 CFR 397, subpart D, remain unchanged by this regulation.

State and Indian Tribe Jurisdiction Over Routing

States and Indian tribes are required to comply with this regulation if they impose routing designations for NRHM. If a political subdivision of a State wishes to impose NRHM routing designations, the State is required to ensure that the political subdivision follows these regulations, including coordination with and approval by the routing agency designated by the Governor. The State is responsible for all NRHM routing designations that local jurisdictions establish, including resolving any disputes between local jurisdictions. The regulation requires the States and Indian tribes to designate routing agencies who will be responsible for ensuring that all NRHM routing designations are made in accordance, and substantively comply, with the procedural requirements of the Federal standards.

Procedures for States and Indian Tribes

1. Federal Standards

This regulation establishes standards which closely follow the specific requirements of 49 U.S.C. § 5112(b) and include procedures for States and Indian tribes to follow if they impose routing designations for NRHM transportation by motor carriers. The Federal standards provide for enhancement of safety; public participation; consultation with other State, local, and tribal governments; through routing; reasonable time to reach agreement between affected States or Indian tribes; not unduly burdening commerce; timely establishment of State and Indian tribe routing; reasonable routes to terminals; State responsibility for local compliance; and a number of "factors to consider." The list of "factors to consider" which States (political subdivisions) and Indian tribes are required to use in regulating routing is contained in § 397.71 of this final rule and includes the factors required by 49 U.S.C. § 5112(b)(1)(I) and additional factors addressing climatic conditions, congestion, and accident analysis. In accordance with 49 U.S.C. § 5112(b)(2), the FHWA will not assign any specific weight to be given by the States or Indian tribes in considering the factors. Additionally, in analyzing these factors, the States or Indian tribes shall use the most current version of "Guidelines for Applying Criteria to Designate Routes for Transporting Hazardous Materials" or an equivalent routing analysis.

2. Public Information and Reporting Requirements

Section 5112(c) of title 49, United States Code, requires the Secretary, in coordination with the States, to periodically update and publish a list of current hazardous materials highway routing designations. Accordingly, the FHWA will compile and publish annually in the **Federal Register** a listing of all hazardous materials routing designations. The FHWA will also maintain a list of all current designations, including additions and changes, and provide this information, upon request, to interested parties. To comply with this requirement, the FHWA is, through this regulation, requiring States and Indian tribes to initially submit, to the FHWA, information on all the existing NRHM routing designations within their boundaries. After the initial submission, any new or changed NRHM routing designation shall be submitted to the FHWA 60 days after the routing designation takes effect.

The States (political subdivisions) and Indian tribes are required to use methods such as maps, listings, road signs, or some combination of these measures as may be needed to adequately inform the public of their NRHM routing designations.

3. Dispute Resolution

Disputes involving highway routing agreements between political jurisdictions within a State are to be resolved by the State's routing agency. Unresolved disputes involving through highway routing or routing designation agreements between States or Indian tribes may be submitted to the Administrator for resolution. Details of the dispute shall be furnished to the Administrator by the petitioner, together with a description of what was done to try to settle it, plus a recommendation of the actions that should be taken by the Administrator to resolve the dispute. The FHWA has revised § 397.75 of this regulation to clearly set forth the importance of public safety in any routing designation. The State or Indian tribe filing the petition for dispute resolution shall be responsible for providing a comparative risk analysis for the proposed routing designation and the current routing condition. Once

a dispute is submitted to the Administrator, no court action may be taken for one year or until after a decision by the Administrator, whichever occurs first.

4. Judicial Review of Dispute Decision

A party to a dispute who is adversely affected by a dispute resolution decision of the Administrator can obtain judicial review of the decision if such court action is filed within 90 days after the Administrator's decision becomes final.

5. Preemption Determinations and Waivers of Preemption

On September 24, 1992, the FHWA published an interim final rule (57 FR 44132) amending 49 CFR 397 by adding a subpart E which established procedures applicable to preemption determinations and waivers of preemption. This final rule amends subpart E to make these procedures applicable to NRHM routing designations which are now included in subpart C.

Any highway routing designation established, maintained or enforced by a State, a political subdivision thereof, or an Indian tribe is preempted if:

(1) Compliance with both the highway routing designation and any requirement of chapter 51 of title 49, United States Code, or of a regulation prescribed thereunder is not possible;

(2) The highway routing designation, as applied or enforced is an obstacle to accomplishing and carrying out chapter 51 of title 49, United States Code, or the regulations prescribed thereunder; or

(3) A State or Indian tribe establishes, maintains or enforces any routing designation that does not comply with the procedural and substantive requirements of the Federal standards set forth in this regulation.

Any person, including a State, political subdivision thereof, or Indian tribe, affected by a NRHM routing designation can apply to the Administrator for a determination of whether such routing designation is preempted.

A State, political subdivision, or Indian tribe may apply to the Administrator for a waiver of preemption. The Administrator is authorized to waive preemption of a NRHM routing designation, based on a determination that it provides equal or better protection to the public than these regulations would provide, and it does not unreasonably burden commerce.

Technical Amendments

Public Law 103–272 (108 Stat. 745), enacted on July 5, 1994, codified certain U.S. transportation laws as title 49, United States Code. Like other transportation statutes, the Hazardous Materials Transportation Act was repealed and its contents restated in title 49. This final rule changes the citations contained in the NPRM to conform to the provisions of the new law.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking document was reviewed under E.O. 12866, "Regulatory Planning and Review." The FHWA has determined that this regulation is a significant regulatory action within the meaning of that Order. This rulemaking is considered a significant regulation under Department of Transportation regulatory policies and procedures because of substantial congressional and public interest. This interest involves minimizing risks while allowing reasonable highway routing for the transportation of NRHM. The regulation does not require the establishment of NRHM routing designations or the use of Federal preemption determinations, waivers of preemption, and dispute resolution, but does provide standards and procedures which are required to be followed if these actions are taken. The FHWA believes that for those States or Indian tribal governments which choose to adopt routing designations, the benefits from implementing these regulations, such as NRHM routing designation continuity, public participation, uniform standards, and preemption and dispute resolution procedures, will be greater than the costs, such as providing the required documentation, coordination, and analysis which allow discretion in level of detail. The FHWA anticipates that the economic impact of this regulation will be minimal based upon a regulatory evaluation.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 601–612), the FHWA has evaluated the effects of this regulation on small entities such as Indian tribes, local governments, and small businesses. The HMTUSA requires the Secretary to adopt standards which States and Indian tribes must follow if they establish, maintain, or enforce NRHM routing designations (specific highway routes over which NRHM may or may not be transported within their jurisdictions, limitations or requirements for highway routing). The regulation does not require the use of NRHM routing designations or Federal preemption determinations, waivers of preemption, and dispute resolution, but provides standards and procedures which are required to be followed if these actions are chosen to be used. The discretionary nature of the actions allows for cost saving options to be used in balancing the needs in commerce and the risks in the transportation of NRHM. To date, relatively few States and local jurisdictions have chosen to establish NRHM routing designations. The FHWA has concluded that the regulation does not substantially affect the ability of, or cost to, local jurisdictions establishing needed NRHM routing designations. The preemption and dispute resolution procedures provide all entities more effective and efficient means of resolving routing issues. Based on this evaluation, the FHWA certifies that this regulation does not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The HMTUSA requires the Secretary to adopt standards which States and Indian tribes must follow if they establish, maintain, or enforce NRHM routing designations (specific highway routes over which NRHM may or may not be transported within their jurisdictions, limitations or requirements for highway routing). The regulation recognizes the State and Indian tribal role in the designation of highway routes for NRHM while de-emphasizing the role of local governments. The regulation provides for discretion by the States and Indian tribes as to whether they impose NRHM routing designations. Each State and Indian tribe is free to establish NRHM routing designations tailored to its own needs in accordance with the Federal standards, using the DOT "Guidelines for Applying Criteria to Designate Routes for Transporting Hazardous Materials," or an equivalent routing analysis which adequately considers overall risk to the public. States and localities have a better understanding of the relative safety of the highways within their jurisdictions than does the Federal government.

The regulation limits the policymaking discretion of the States, their political subdivisions and Indian tribes. The regulation is necessary, however, to achieve the purposes and implement the requirements of the HMTUSA. Accordingly, it is certified

that this action has been analyzed in accordance with the principles, criteria, and requirements contained in Executive Order 12612 and, it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

The information collection, reporting, and recordkeeping provisions in § 397.73 of this regulation were submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and approved by the Office of Management and Budget under control number 2125–0554.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action does not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 397

Hazardous materials transportation, Highways and roads, Motor carrier safety permits.

In consideration of the foregoing, the Federal Highway Administration is amending title 49, Code of Federal Regulations, subtitle B, chapter III, part 397, by adding a subpart C, and amending subpart E, as set forth below.

Issued on October 4, 1994.

Rodney E. Slater,

Federal Highway Administrator.

PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS

1. The authority citation for part 397 is revised to read as follows:

Authority: 49 U.S.C. 5101 *et seq.*; 49 CFR 1.48.

§ 397.9 [Removed and Reserved]

2. Section 397.9 is removed and reserved.

3. Part 397 is amended by adding subpart C to read as follows:

SUBPART C—ROUTING OF NON-RADIOACTIVE HAZARDOUS MATERIALS

Sec.

397.61 Purpose and scope.
397.63 Applicability.
397.65 Definitions.
397.67 Motor carrier responsibility for routing.
397.69 Highway routing designations; preemption.
397.71 Federal standards.
397.73 Public information and reporting requirements.
397.75 Dispute resolution.
397.77 Judicial review of dispute decision.

§ 397.61 Purpose and scope.

This subpart contains routing requirements and procedures that States and Indian tribes are required to follow if they establish, maintain, or enforce routing designations over which a non-radioactive hazardous material (NRHM) in a quantity which requires placarding may or may not be transported by a motor vehicle. It also provides regulations for motor carriers transporting placarded or marked NRHM and procedures for dispute resolutions regarding NRHM routing designations.

§ 397.63 Applicability.

The provisions of this subpart apply to any State or Indian tribe that establishes, maintains, or enforces any routing designations over which NRHM may or may not be transported by motor vehicle. They also apply to any motor carrier that transports or causes to be transported placarded or marked NRHM in commerce.

§ 397.65 Definitions.

For purposes of this subpart, the following definitions apply:

Administrator. The Federal Highway Administrator, who is the chief executive of the Federal Highway Administration, an agency within the United States Department of Transportation, or his/her designate.

Commerce. Any trade, traffic, or transportation in the United States which:

(1) is between a place under the jurisdiction of a State or Indian tribe and any place outside of such jurisdiction; or

(2) is solely within a place under the jurisdiction of a State or Indian tribe but which affects trade, traffic, or transportation described in subparagraph (a).

FHWA. The Federal Highway Administration, an agency within the Department of Transportation.

Hazardous material. A substance or material, including a hazardous substance, which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, or property when transported in commerce, and which has been so designated.

Indian tribe. Has the same meaning as contained in § 4 of the Indian Self-Determination and Education Act, 25 U.S.C. 450b.

Motor carrier. A for-hire motor carrier or a private motor carrier of property. The term includes a motor carrier's agents, officers and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers.

Motor vehicle. Any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof.

NRHM. A non-radioactive hazardous material transported by motor vehicle in types and quantities which require placarding, pursuant to Table 1 or 2 of 49 CFR 172.504.

Political subdivision. A municipality, public agency or other instrumentality of one or more States, or a public corporation, board, or commission established under the laws of one or more States.

Radioactive material. Any material having a specific activity greater than 0.002 microcuries per gram (uCi/g), as defined in 49 CFR 173.403.

Routing agency. The State highway agency or other State agency designated by the Governor of that State, or an agency designated by an Indian tribe, to supervise, coordinate, and approve the NRHM routing designations for that State or Indian tribe.

Routing designations. Any regulation, limitation, restriction, curfew, time of travel restriction, lane restriction, routing ban, port-of-entry designation, or route weight restriction, applicable to the highway transportation of NRHM over a specific highway route or portion of a route.

Secretary. The Secretary of Transportation.

State. A State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa or Guam.

§ 397.67 Motor carrier responsibility for routing.

(a) A motor carrier transporting NRHM shall comply with NRHM routing designations of a State or Indian tribe pursuant to this subpart.

(b) A motor carrier carrying hazardous materials required to be placarded or marked in accordance with 49 CFR 177.823 and not subject to a NRHM routing designations pursuant to this subpart, shall operate the vehicle over routes which do not go through or near heavily populated areas, places where crowds are assembled, tunnels, narrow streets, or alleys, except where the motor carrier determines that:

(1) There is no practicable alternative;

(2) A reasonable deviation is necessary to reach terminals, points of loading and unloading, facilities for food, fuel, repairs, rest, or a safe haven; or

(3) A reasonable deviation is required by emergency conditions, such as a detour that has been established by a highway authority, or a situation exists where a law enforcement official requires the driver to take an alternative route.

(c) Operating convenience is not a basis for determining whether it is practicable to operate a motor vehicle in accordance with paragraph (b) of this section.

(d) Before a motor carrier requires or permits a motor vehicle containing explosives in Class 1, Divisions 1.1, 1.2, 1.3, as defined in 49 CFR 173.50 and 173.53 respectively, to be operated, the carrier or its agent shall prepare a written route plan that complies with this section and shall furnish a copy to the driver. However, the driver may prepare the written plan as agent for the motor carrier when the trip begins at a location other than the carrier's terminal.

§ 397.69 Highway routing designations; preemption.

(a) Any State or Indian tribe that establishes or modifies a highway routing designation over which NRHM may or may not be transported on or after November 14, 1994, and maintains or enforces such designation, shall comply with the highway routing standards set forth in § 397.71 of this subpart. For purposes of this subpart, any highway routing designation affecting the highway transportation of NRHM, made by a political subdivision of a State is considered as one made by that State, and all requirements of this subpart apply.

(b) Except as provided in §§ 397.75 and 397.219, a NRHM route designation made in violation of paragraph (a) of this section is preempted pursuant to section 105(b)(4) of the Hazardous Materials Transportation Act (49 U.S.C. app. 1804(b)(4)). This provision shall become effective after November 14, 1996.

(c) A highway routing designation established by a State, political subdivision, or Indian tribe before November 14, 1994 is subject to preemption in accordance with the preemption standards in paragraphs (a)(1) and (a)(2) of § 397.203 of this subpart.

(d) A State, political subdivision, or Indian tribe may petition for a waiver of preemption in accordance with § 397.213 of this part.

§ 397.71 Federal standards.

(a) A State or Indian tribe shall comply with the Federal standards under paragraph (b) of this section when establishing, maintaining or enforcing specific NRHM routing designations over which NRHM may or may not be transported.

(b) The Federal standards are as follows:

(1) Enhancement of public safety. The State or Indian tribe shall make a finding, supported by the record to be developed in accordance with paragraphs (b)(2)(ii) and (b)(3)(iv) of this section, that any NRHM routing designation enhances public safety in the areas subject to its jurisdiction and in other areas which are directly affected by such highway routing designation. In making such a finding, the State or Indian tribe shall consider:

(i) The factors listed in paragraph (b)(9) of this section; and

(ii) The DOT "Guidelines for Applying Criteria to Designate Routes for Transporting Hazardous Materials," DOT/RSPA/OHMT–89–02, July 1989 [1] or its most current version; or an equivalent routing analysis which adequately considers overall risk to the public.

(2) Public participation. Prior to the establishment of any NRHM routing designation, the State or Indian tribe shall undertake the following actions to ensure participation by the public in the routing process:

(i) The State or Indian tribe shall provide the public with notice of any proposed NRHM routing designation and a 30-day period in which to comment. At any time during this period or following review of the comments received, the State or Indian tribe shall decide whether to hold a public hearing on the proposed NRHM route designation. The public shall be given 30 days prior notice of the public hearing which shall be conducted as described in paragraph (b)(2)(ii) of this section. Notice for both the comment period and the public hearing, if one is held, shall be given by publication in at least two newspapers of general circulation in the affected area or areas and shall contain a complete description of the proposed routing designation, together with the date, time, and location of any public hearings. Notice for both the comment period and any public hearing may also be published in the official register of the State.

(ii) If it is determined that a public hearing is necessary, the State or Indian tribe shall hold at least one public hearing on the record during which the public will be afforded the opportunity to present their views and any information or data related to the proposed NRHM routing designation. The State shall make available to the public, upon payment of prescribed costs, copies of the transcript of the hearing, which shall include all exhibits and documents presented during the hearing or submitted for the record.

(3) Consultation with others. Prior to the establishment of any NRHM routing designation, the State or Indian tribe shall provide notice to, and consult with, officials of affected political subdivisions, States and Indian tribes, and any other affected parties. Such actions shall include the following:

(i) At least 60 days prior to establishing a routing designation, the State or Indian tribe shall provide notice, in writing, of the proposed routing designation to officials responsible for highway routing in all other affected States or Indian tribes. A copy of this notice may also be sent to all affected political subdivisions. This notice shall request approval, in writing, by those States or Indian tribes, of the proposed routing designations. If no response is received within 60 days from the day of receipt of the notification of the proposed routing designation, the routing designation shall be considered approved by the affected State or Indian tribe.

(ii) The manner in which consultation under this paragraph is conducted is left to the discretion of the State or Indian tribe.

(iii) The State or Indian tribe shall attempt to resolve any concern or disagreement expressed by any consulted official related to the proposed routing designation.

[1] This document may be obtained from Safety Technology and Information Management Division, HHS–10, Federal Highway Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590–0001.

(iv) The State or Indian tribe shall keep a record of the names and addresses of the officials notified pursuant to this section and of any consultation or meeting conducted with these officials or their representatives. Such record shall describe any concern or disagreement expressed by the officials and any action undertaken to resolve such disagreement or address any concern.

(4) Through routing. In establishing any NRHM routing designation, the State or Indian tribe shall ensure through highway routing for the transportation of NRHM between adjacent areas. The term "through highway routing" as used in this paragraph means that the routing designation must ensure continuity of movement so as to not impede or unnecessarily delay the transportation of NRHM. The State or Indian tribe shall utilize the procedures established in paragraphs (b)(2) and (b)(3) of this section in meeting these requirements. In addition, the State or Indian tribe shall make a finding, supported by a risk analysis conducted in accordance with paragraph (b)(1) of this section, that the routing designation enhances public safety. If the risk analysis shows—

(i) That the current routing presents at least 50 percent more risk to the public than the deviation under the proposed routing designation, then the proposed routing designation may go into effect.

(ii) That the current routing presents a greater risk but less than 50 percent more risk to the public than the deviation under the proposed routing restriction, then the proposed routing restriction made by a State or Indian tribe shall only go into effect if it does not force a deviation of more than 25 miles or result in an increase of more than 25 percent of that part of a trip affected by the deviation, whichever is shorter, from the most direct route through a jurisdiction as compared to the intended deviation.

(iii) That the current route has the same or less risk to the public than the deviation resulting from the proposed routing designation, then the routing designation shall not be allowed.

(5) Agreement of other States; burden on commerce. Any NRHM routing designation which affects another State or Indian tribe shall be established, maintained, or enforced only if:

(i) It does not unreasonably burden commerce, and

(ii) It is agreed to by the affected State or Indian tribe within 60 days of receipt of the notice sent pursuant to paragraph (b)(3)(i) of this section, or it is approved by the Administrator pursuant to § 397.75.

(6) Timeliness. The establishment of a NRHM routing designation by any State or Indian tribe shall be completed within 18 months of the notice given in either paragraph (b)(2) or (b)(3) of this section, whichever occurs first.

(7) Reasonable routes to terminals and other facilities. In establishing or providing for reasonable access to and from designated routes, the State or Indian tribe shall use the shortest practicable route considering the factors listed in paragraph (b)(9) of this section. In establishing any NRHM routing designation, the State or Indian tribe shall provide reasonable access for motor vehicles transporting NRHM to reach:

(i) Terminals,

(ii) Points of loading, unloading, pickup and delivery, and

(iii) Facilities for food, fuel, repairs, rest, and safe havens.

(8) Responsibility for local compliance. The States shall be responsible for ensuring that all of their political subdivisions comply with the provisions of this subpart. The States shall be responsible for resolving all disputes between such political subdivisions within their jurisdictions. If a State or any political subdivision thereof, or an Indian tribe chooses to establish, maintain, or enforce any NRHM routing designation, the Governor, or Indian tribe, shall designate a routing agency for the State or Indian tribe, respectively. The routing agency shall ensure that all NRHM routing designations within its jurisdiction comply with the Federal standards in this section. The State or Indian tribe shall comply with the public information and reporting requirements contained in § 397.73.

(9) Factors to consider. In establishing any NRHM routing designation, the State or Indian tribe shall consider the following factors:

(i) Population density. The population potentially exposed to a NRHM release shall be estimated from the density of the residents, employees, motorists, and other persons in the area, using United States census tract maps or other reasonable means for determining the population within a potential impact zone along a designated highway route. The impact zone is the potential range of effects in the event of a release. Special populations such as schools, hospitals, prisons, and senior citizen homes shall, among other things, be considered when determining the potential risk to the populations along a highway routing. Consideration shall be given to the amount of time during which an area will experience a heavy population density.

(ii) Type of highway. The characteristics of each alternative NRHM highway routing designation shall be compared. Vehicle weight and size limits, underpass and bridge clearances, roadway geometrics, number of lanes, degree of access control, and median and shoulder structures are examples of characteristics which a State or Indian tribe shall consider.

(iii) Types and quantities of NRHM. An examination shall be made of the type and quantity of NRHM normally transported along highway routes which are included in a proposed NRHM routing designation, and consideration shall be given to the relative impact zone and risks of each type and quantity.

(iv) Emergency response capabilities. In consultation with the proper fire, law enforcement, and highway safety agencies, consideration shall be given to the emergency response capabilities which may be needed as a result of a NRHM routing designation. The analysis of the emergency response capabilities shall be based upon the proximity of the emergency response facilities and their capabilities to contain and suppress NRHM releases within the impact zones.

(v) Results of consultation with affected persons. Consideration shall be given to the comments and concerns of all affected persons and entities provided during public hearings and consultations conducted in accordance with this section.

(vi) Exposure and other risk factors. States and Indian tribes shall define the exposure and risk factors associated with any NRHM routing designations. The distance to sensitive areas shall be considered. Sensitive areas include, but are not limited to, homes and commercial buildings; special populations in hospitals, schools, handicapped facilities, prisons and stadiums; water sources such as streams and lakes; and natural areas such as parks, wetlands, and wildlife reserves.

(vii) Terrain considerations. Topography along and adjacent to the proposed NRHM routing designation that may affect the potential severity of an accident, the dispersion of the NRHM upon release and the control and clean up of NRHM if released shall be considered.

(viii) Continuity of routes. Adjacent jurisdictions shall be consulted to ensure routing continuity for NRHM across common borders. Deviations from the most direct route shall be minimized.

(ix) Alternative routes. Consideration shall be given to the alternative routes to, or resulting from, any NRHM route designation. Alternative routes shall be examined, reviewed, or evaluated to the extent necessary to demonstrate that the most probable alternative routing resulting from a routing designation is safer than the current routing.

(x) Effects on commerce. Any NRHM routing designation made in accordance with this subpart shall not create an unreasonable burden upon interstate or intrastate commerce.

(xi) Delays in transportation. No NRHM routing designations may create unnecessary delays in the transportation of NRHM.

(xii) Climatic conditions. Weather conditions unique to a highway route such as snow, wind, ice, fog, or other climatic conditions that could affect the safety of a route, the dispersion of the NRHM upon release, or increase the difficulty of controlling it and cleaning it up shall be given appropriate consideration.

(xiii) Congestion and accident history. Traffic conditions unique to a highway routing such as: traffic congestion; accident experience with motor vehicles, traffic considerations that could affect the potential for an accident, exposure of the public to any release, ability to perform emergency response operations, or the temporary closing of a highway for cleaning up any release shall be given appropriate consideration.

§ 397.73 Public information and reporting requirements.

(a) Public information. Information on NRHM routing designations must be made available by the States and Indian tribes to the public in the form of maps, lists, road signs or some combination thereof. If road signs are used, those signs and their placements must comply with the provisions of the Manual on Uniform Traffic Control Devices,[2] published by the FHWA, particularly the Hazardous Cargo signs identified as R14–2 and R14–3 shown in Section 2B–43 of that Manual.

(b) Reporting and publishing requirements. Each State or Indian tribe, through its routing agency, shall provide information identifying all NRHM routing designations which exist within their jurisdictions on November 14, 1994 to the FHWA, HHS–30, 400 7th St., SW., Washington, D.C. 20590–0001 by March 13,1995. The State or Indian tribe shall include descriptions of these routing designations, along with the dates they were established. This information may also be published in each State's official register of State regulations. Information on any subsequent changes or new NRHM routing designations shall be furnished within 60 days after establishment to the FHWA. This information will be available from the FHWA, consolidated by the FHWA, and published annually in whole or as updates in the **Federal Register**. Each State may also publish this information in its official register of State regulations.

(Approved by the Office of Management and Budget under control number 2125–0554)

§ 397.75 Dispute resolution.

(a) Petition. One or more States or Indian tribes may petition the Administrator to resolve a dispute relating to an agreement on a proposed NRHM routing designation. In resolving a dispute under these provisions, the Administrator will provide the greatest level of safety possible without unreasonably burdening commerce, and ensure compliance with the Federal standards established at § 397.71 of this subpart.

(b) Filing. Each petition for dispute resolution filed under this section must:

(1) Be submitted to the Administrator, Federal Highway Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001. Attention: HCC–10 Docket Room, Hazardous Materials Routing Dispute Resolution Docket.

(2) Identify the State or Indian tribe filing the petition and any other State, political subdivision, or Indian tribe whose NRHM routing designation is the subject of the dispute.

(3) Contain a certification that the petitioner has complied with the notification requirements of paragraph (c) of this section, and include a list of the names and addresses of each State, political subdivision, or Indian tribe official who was notified of the filing of the petition.

(4) Clearly set forth the dispute for which resolution is sought, including a complete description of any disputed NRHM routing designation and an explanation of how the disputed routing designation affects the petitioner or how it impedes through highway routing. If the routing designation being disputed results in alternative routing, then a comparative risk analysis for the designated route and the resulting alternative routing shall be provided.

(5) Describe any actions taken by the State or Indian tribe to resolve the dispute.

(6) Explain the reasons why the petitioner believes that the Administrator should intervene in resolving the dispute.

(7) Describe any proposed actions that the Administrator should take to resolve the dispute and how these actions would provide the greatest level of highway safety without unreasonably burdening commerce and would ensure compliance with the Federal standards established in this subpart.

(c) Notice.

(1) Any State or Indian tribe that files a petition for dispute resolution under this subpart shall mail a copy of the petition to any affected State, political subdivision, or Indian tribe, accompanied by a statement that the State, political subdivision, or Indian tribe may submit comments regarding the petition to the Administrator within 45 days.

(2) By serving notice on any other State, political subdivision, or Indian tribe determined by the Administrator to be possibly affected by the issues in dispute or the resolution sought, or by publication in the **Federal Register**, the Administrator may afford those persons an opportunity to file written comments on the petition.

(3) Any affected State, political subdivision, or Indian tribe submitting written comments to the Administrator with respect to a petition filed under this section shall send a copy of the comments to the petitioner and certify to the Administrator as to having complied with this requirement. The Administrator may notify other persons participating in the proceeding of the comments and provide an opportunity for those other persons to respond.

(d) Court actions. After a petition for dispute resolution is filed in accordance with this section, no court action may be brought with respect to the subject matter of such dispute until a final decision has been issued by the Administrator or until the last day of the one-year period beginning on the day the Administrator receives the petition, whichever occurs first.

(e) Hearings; alternative dispute resolution. Upon receipt of a petition filed pursuant to paragraph (a) of this section, the Administrator may schedule a hearing to attempt to resolve the dispute and, if a hearing is scheduled, will notify all parties to the dispute of the date, time, and place of the hearing. During the hearing the parties may offer any information pertinent to the resolution of the dispute. If an agreement is reached, it may be

[2] This publication may be purchased from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 and has Stock No. 050–001–81001–8. It is available for inspection and copying as prescribed in 49 CFR part 7, appendix D. See 23 CFR 655, subpart F.

stipulated by the parties, in writing, and, if the Administrator agrees, made part of the decision in paragraph (f) of this section. If no agreement is reached, the Administrator may take the matter under consideration and announce his or her decision in accordance with paragraph (f) of this section. Nothing in this section shall be construed as prohibiting the parties from settling the dispute or seeking other methods of alternative dispute resolution prior to the final decision by the Administrator.

(f) Decision. The Administrator will issue a decision based on the petition, the written comments submitted by the parties, the record of the hearing, and any other information in the record. The decision will include a written statement setting forth the relevant facts and the legal basis for the decision.

(g) Record. The Administrator will serve a copy of the decision upon the petitioner and any other party who participated in the proceedings. A copy of each decision will be placed on file in the public docket. The Administrator may publish the decision or notice of the decision in the **Federal Register**.

§ 397.77 Judicial review of dispute decision.

Any State or Indian tribe adversely affected by the Administrator's decision under § 397.75 of this subpart may seek review by the appropriate district court of the United States under such proceeding only by filing a petition with such court within 90 days after such decision becomes final.

4. In § 397.201, paragraph (a) is revised and paragraph (c) is amended by revising the definitions for "Act", "Administrator", "routing agency" and "routing designation" and by adding new definitions for "hazardous material" and "Indian tribe" to read as follows:

§ 397.201 Purpose and scope of the procedures.

(a) This subpart prescribes procedures by which:

(1) Any person, including a State, political subdivision thereof, or Indian tribe, directly affected by any highway routing designation for hazardous materials may apply to the Administrator for a determination as to whether that highway routing designation is preempted under 49 U.S.C. § 5125, or § 397.69 or § 397.203 of this part; and

(2) A State, political subdivision thereof, or Indian tribe may apply to the Administrator for a waiver of preemption with respect to any highway routing designation that the State, political subdivision thereof, or Indian tribe acknowledges to be preempted by 49 U.S.C. § 5125, or § 397.69 or § 397.203 of this part, or that has been determined by a court of competent jurisdiction to be so preempted.

* * * * *

(c) For purposes of this subpart:

Act means 49 U.S.C. § 5101 *et seq.*, formerly known as the Hazardous Materials Transportation Act.

Administrator means the Federal Highway Administrator, who is the chief executive of the Federal Highway Administration, an agency of the United States Department of Transportation, or his/her designate.

Hazardous material means a substance or material, including a hazardous substance, which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, or property, when transported in commerce, and which has been so designated.

Indian tribe has the same meaning as contained in § 4 of the Indian Self-Determination and Education Act, 25 U.S.C. 450b.

* * * * *

Routing agency means the State highway agency or other State agency designated by the Governor of a State, or an agency designated by an Indian tribe, to supervise, coordinate, and approve the highway routing designations for that State or Indian tribe. Any highway routing designation made by a political subdivision of a State shall be considered a designation made by that State.

Routing designation includes any regulation, limitation, restriction, curfew, time of travel restriction, lane restriction, routing ban, port-of-entry designation, or route weight restriction applicable to the highway transportation of hazardous materials over a specific highway route or portion of a route.

* * * * *

5. In § 397.203, paragraph (a)(3) is revised to read as follows:

§ 397.203 Standards for determining preemption.

(a) * * *

(3) The highway routing designation is preempted pursuant to § 397.69(b) of this part.

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